

## **Title 7**

### **GOVERNMENT EMPLOYEES**

#### **Chapters:**

- 01 Board and Administration**
- 02 Career Service**
- 03 (Reserved)**
- 04 Classification**
- 05 Alcohol and Drug Testing of American Samoa Government Employees**
- 06 Contract Employees**
- 07 (Reserved)**
- 08 Termination of Employment—Disciplinary Measures**
- 09 (Reserved)**
- 10 Compensation**
- 11 (Reserved)**
- 12 Leaves and Holidays**
- 13 (Reserved)**
- 14 Government Employees' Retirement Fund**
- 15 Deferred Compensation Plan**

#### **Chapter 01**

### **BOARD AND ADMINISTRATION**

#### **Sections:**

- 7.0101 Created—Membership.**
- 7.0102 Powers and duties.**
- 7.0103 Punishment for perjury or contempt.**
- 7.0104 Administrative appeals and grievances.**
- 7.0110 Director of manpower resources—Duties.**

#### **7.0101 Created—Membership.**

(a) There is created a Personnel Advisory Board consisting of 7 members appointed by the Governor, one of whom is designated by the Governor as chairman.

(b) The members of the Personnel Advisory Board serve without pay for their duties as members of the Board.

History: 1962, PL 7-22; amd 1981, PL 17-18 § 1.

**Research Guide:** For provisions regarding the Director of Manpower Resources as Executive Secretary of the Personnel Advisory Board, see 7.0110.

#### **7.0102 Powers and duties.**

- (a) The primary duties and responsibilities of the Personnel Advisory Board shall be:
  - (1) to investigate and make recommendations for improvements to the Governor with regards to the manpower resources requirements, needs and development of the American Samoa Government, and in carrying out such investigations, the Board shall have full power to subpoena and compel the testimony of witnesses;
  - (2) to develop programs designed to improve effectiveness of government

employees' performance and discharge of their duties and responsibilities; and

(3) to investigate personnel problems in the government and report to the Governor their findings and recommendations, if any, with respect to such investigation.

(b) The Board shall perform such other duties as are from time to time assigned to it by the Governor.

(c) The Board shall have the power to make such rules as are necessary for the orderly hearing of matters before it.

(d) The Board shall from time to time review rules and regulations promulgated in accordance with this chapter and 4.0335, 7.0110 et seq.

**History:** 1962, PL 7-22; amd 1998, PL 25-37 § 1.

**Case Notes:**

Board has no authority under this section to order the hiring or firing of any employee: it is only advisory in nature. *Banks v. A.S.G.*, 4 A.S.R.2d 113 (1987).

Where evidence indicated that decision to terminate probationary employee was made by appropriate executive official with Governor's approval rather than by advisory board, court would not question the decision. A.S.C.A. §§ 7.0102, 7.0206, 7.0211. *Banks v. American Samoa Government*, 4 A.S.R.2d 113 (1987).

**7.0103 Punishment for perjury or contempt.**

Any person who commits perjury before or is in contempt of the Personnel Advisory Board shall be punished as though the offense were committed before the High Court of American Samoa.

**History:** 1962, PL 7-22.

**Research Guide:** For provisions regarding the High Court's contempt power, see 3.0203.

**7.0104 Administrative appeals and grievances.**

All administrative appeals and grievances of government employees shall be referred to the Administrative Law Judge for hearing and disposition in accordance with the regulations of the American Samoa Government.

**History:** 1998, PL 25-37 § 6.

**7.0110 Director of Human Resources—Duties.**

In addition to any duty assigned by the Governor, the Director of Human Resources shall:

- (1) apply and carry out the provisions of this chapter and 7.0201 et seq.;
- (2) be executive secretary of the Personnel Advisory Board;
- (3) establish and maintain a roster and other records of employees of the government;
- (4) make recommendations to and assist the Personnel Advisory Board in developing programs designed to improve employee effectiveness, and to enforce such programs as the board, subject to the approval of the Governor, may promulgate;
- (5) assist the Personnel Advisory Board in investigating personnel problems in the government.

**History:** 1962, PL 7-22; amd 1998, PL 25-37 § 1.

**Case Notes:**

Because the Governor has general supervision and control of all executive departments, agencies and instrumentalities of the Government, personnel decisions are subject to his direction as long as his actions are in accordance with applicable territorial and federal laws and rules. Rev. Const. Am. Samoa Art. II, § 7; A.S.C.A. § 7.0110; A.S.A.C. §§ 4.0102, 4.0111(b). *Sala v. American Samoa Gov't*, 21 A.S.R.2d 14.

## **Chapter 02**

### **CAREER SERVICE**

#### **Sections:**

- 7.0201 Purpose.**
- 7.0202 Definitions.**
- 7.0203 Persons included in career service.**
- 7.0204 Employment standards policy.**
- 7.0205 Qualifications.**
- 7.0206 Procedure for filling vacancies—Examinations—Appointments.**
- 7.0207 Categories of appointments.**
- 7.0208 Restoration of preference eligibles previously in career service.**
- 7.0209 Preference eligibles separated or furloughed from career service.**
- 7.0210 False statements in employment application.**
- 7.0211 Probationary period.**
- 7.0212 Residency requirement**
- 7.0213 Annual physical examinations.**
- 7.0214 Bonding of employees.**

#### **7.0201 Purpose.**

The general purpose of this chapter is to establish for the government a system of personnel administration which will assure equitable treatment of employees of the government and a merit system based on recognized principles of appointment, promotion, termination, and other aspects of government employment.

**History:** 1962, PL 7-22; 1963, PL 8-10; 1967, PL 10-30.

#### **7.0202 Definitions.**

For the purposes of this chapter:

(a) “Disabled veteran” means an individual who has served on active duty in the armed forces of the United States, has been separated therefrom under honorable conditions, and has established the present existence of a service-connected disability or is receiving compensation, disability retirement benefits, or pension because of a public statute administered by the Veterans’ Administration or a military department of the United States.

(b) “Preference eligible” means a U.S. national of American Samoan ancestry who is:

- (1) a veteran as defined in subsection (c);
- (2) a disabled veteran as defined in subsection (a); or
- (3) the unmarried widow of a veteran.

(c) “Veteran” means an individual who has served on active duty in the armed forces of the United States for a period of not less than 180 consecutive days (other than for training), and who has been separated from the armed forces under honorable conditions.

**History:** 1971, PL 12-27 § 1.

### **7.0203 Persons included in career service.**

The career service includes all employees of the government except contract employees, federal employees, district, county, and village officials, members and employees of the Legislature and judges. Notwithstanding the above, the employees of the Legislative Reference Bureau, except contract employees, are members of the career service.

**History:** 1962, PL 7-22; amd 1975, PL 14-15 § 1.

**Amendments:** 1975 Added second sentence.

### **7.0204 Employment standards policy.**

(a) It is the declared policy of the government that all appointments and promotions to positions in the career service of the government shall be made solely on the basis of merit, fitness, and length and quality of previous service.

(b) Merit and fitness shall, whenever practicable, be ascertained by competitive examinations. In preparing such examinations, or selecting incumbents in the absence of examinations, administrators shall take cognizance of the trend in American Samoa toward a greater degree of self-determination, and the need for training opportunities for citizens of American Samoa in furthering that transition. Whenever possible, therefore, standards for employment will give all due recognition to practical experience in the function and probable aptitude for learning while on the job, rather than relying in the main on formalized education and training.

**History:** 1962, PL 7-22; 1963, PL 8-10; 1967, PL 10-30.

#### **Case Notes:**

ASG regulations which set out those situations in which non-competitive procedures are applicable do not supersede the mandatory statutory requirement relating to the utilization of an applicant supply-file system for the hiring and promotion of government employees. A.S.C.A. §§ 7.0204(b), 7.0205(b), 7.0206; A.S.A.C. § 4.0303(b). *Leiato v. Personnel Advisory Board*, 21 A.S.R.2d 25 (1992).

### **7.0205 Qualifications.**

(a) Applicants to the career service shall be required to take preemployment physical examinations.

(b) Any person entering the career service shall be a resident of American Samoa and either an American Samoan or an American national at the time he enters the service. If no resident can be found who meets the minimum qualifications for employment established for a particular class of work, nonresidents may be employed.

(c) Except as provided in subsection (d) or elsewhere in this chapter, all persons entering the career service shall meet the minimum requirements for employment established for the class of work for which they apply.

(d) In determining the qualifications of a preference eligible, as defined in section 7.0202, for examination for, appointment in or reinstatement in the career service, the Director of Manpower Resources shall waive:

(1) requirements as to age, height and weight unless the requirement is essential to the performance of the duties of the position; and

(2) physical requirements if, in the opinion of the Director of Manpower Resources, after considering the recommendation of an accredited physician, the preference eligible

is physically able to perform efficiently the duties of the position.

(e) The government shall not hire nor continue to employ anyone convicted of a crime involving stealing, embezzlement, or misappropriation of property, which is classified as a felony in American Samoa and or any other country.

**History:** 1962, PL 7-22; 1967, PL 10-30; 1970, PL 11-98; 1971, PL 12-27 § 2; amd 1976, PL 14-26; amd 1998, PL 25-38 § 1.

**Amendments:** 1976 Subsection (e): added.

**Case Notes:**

Section is essentially a preference for permanent residents rather than for ethnic Samoans and does not breach any constitutionally applicable standards of equal protection. *Banks v .A.S.G.*, 4 A.S.R.2d 113(1987).

ASG regulations which set out those situations in which non-competitive procedures are applicable do not supersede the mandatory statutory requirement relating to the utilization of an applicant supply-file system for the hiring and promotion of government employees. A.S.C.A. §§ 7.0204(b), 7.0205(b), 7.0206; A.S.A.C. § 4.0303(b). *Leiato v. Personnel Advisory Board*, 21 A.S.R.2d 25 (1992).

**7.0206 Procedure for filling vacancies—Examinations—Appointments.**

(a) The Director of Manpower Resources shall establish the procedure for filling vacancies in the career service on a permanent basis from among eligible candidates for employment.

(b) When practicable, competitive examinations shall be held, resulting in establishment of registers comprising the names of those competitors who have attained eligible ratings arranged according to their numerical rating scores in descending order; provided, that a preference eligible as defined in subsection (a) of 7.0202, who receives a passing grade in a competitive examination given pursuant to this section shall receive 10 additional points above his earned rating; and provided, further, that the names of such preference eligibles shall be entered upon the appropriate registers ahead of others having the same rating; and further provided that a preference eligible as defined in subsection (b) of 7.0202 shall receive 5 additional points.

(c) If no examination is given, applicants for employment shall be subject to an applicant supply file system established and administered by the Director of Manpower Resources.

(d) Upon receipt of an approved request from a department head or other authorized operating official to fill a vacancy in the career service on a permanent basis, the Director of Manpower Resources shall certify to the former for consideration and selection the names of the 5 candidates from the appropriate examination register who have the highest numerical rating scores, which scores, in the case of preference eligibles as that term is defined in section 7.0202, shall include the additional points added pursuant to subsection (b), or, in the absence of such a register, the names of the 5 candidates from an applicant supply file whom the Director of Manpower Resources considers to be best qualified by virtue of experience and/or training. Only those candidates certified in the manner described above are eligible for employment unless an exception is permitted under regulations of the Governor.

(e) In no instance will a government official allow an employee to enter on duty unless he has been assured by the Director of Manpower Resources or a designated member of his staff that the appointment action has been approved.

(f) In selecting a candidate for appointment, any appointing authority who passes over a preference eligible whose name appears on the register or list of candidates from the

applicant supply file transmitted to such appointing authority by the Director of Manpower Resources pursuant to subsection (d) and who selects an individual who is not a preference eligible, shall file written reasons therefor with the director of manpower resources. The Director of Manpower Resources shall make such reasons a part of the records of the preference eligibles so passed over. The Director of Manpower Resources may require the submission of more detailed information in support of passing over a preference eligible, shall determine the sufficiency or in-sufficiency of the reasons submitted, and shall send his findings to the appointing authority. The appointing authority shall comply with the findings of the Director of Manpower Resources. The preference eligible or his representative, on request, shall be entitled to a copy of the reasons submitted by the appointing authority and the findings of the Director of Manpower Resources.

(g) When 3 or more names of preference eligibles appear on the register or list of candidates from the applicant supply file transmitted to any appointing authority by the Director of Manpower Resources pursuant to subsection (d), the appointing authority may select and appoint only a preference eligible to fill the vacancy under consideration.

**History:** 1962, PL 7-22; 1967, PL 10-30; amd 1971, PL 12-27 § 4.

**Case Notes:**

Section apparently violated by “order” of personnel advisory board to hire or fire an employee. Only director of manpower resources and head of agency where vacancy exists are authorized to make such decisions. *Banks v. A.S.G.*, 4 A.S.R.2d 113 (1987).

Where evidence indicated that decision to terminate probationary employee was made by appropriate executive official with Governor's approval rather than by advisory board, court would not question the decision. A.S.C.A. §§ 7.0102, 7.0206, 7.0211. *Banks v. American Samoa Government*, 4 A.S.R.2d 113 (1987).

ASG regulations which set out those situations in which non-competitive procedures are applicable do not supersede the mandatory statutory requirement relating to the utilization of an applicant supply-file system for the hiring and promotion of government employees. A.S.C.A. §§ 7.0204(b), 7.0205(b), 7.0206; A.S.A.C. § 4.0303(b). *Leiato v. Personnel Advisory Board*, 21 A.S.R.2d 25 (1992).

## **7.0207 Categories of appointments.**

(a) Appointments shall be in one of the following categories:

(1) Appointment. Appointment without time limitations, to a position in the career service, of any eligible candidate selected from an appropriate examination or applicant supply file certificate as described in section 7.0206:

(2) Excepted Appointment. Appointment without time limitation to a position in the career service as permitted by regulations of the Governor;

(3) Reinstatement. Appointment without time limitation to a position in the career service of a former career service employee who satisfactorily completed the probationary period described in section 7.0211, and whose reemployment is not prohibited by regulations or laws relating to the reemployment of employees separated for cause or who have abandoned their position;

(4) Temporary Appointment. Appointment not to exceed a specific date within a period not to exceed one calendar year.

(b) Any of the appointment actions described in subsection (a) may be made subject to a when-actually-employed (WAE) provision, restricting payment of compensation to time actually worked. Employees appointed under such a provision, otherwise eligible for leave or other service-credit benefits, shall be accorded such benefits on the basis of time actually worked, provided they are subject to a regular (prearranged) tour of duty when

they do work.

(c) Any of the appointment actions described in subsection (a) may be made subject to a part-time (PT) provision restricting employment to a regular (prearranged) tour of duty of less than full time. Employees appointed under such provision, who are otherwise eligible for leave and other service-credit benefits, shall be accorded such benefits on the basis of time actually worked.

(d) Any person convicted of a crime involving stealing, embezzlement, or misappropriation of property, which is classified as a felony in American Samoa, shall not be eligible for any appointment provided for in subsection (a).

**History:** 1962, PL 7-22; 1967, PL 10-30; 1971, PL 12-27 § 4; amd 1998, PL 25-38 § 2.

#### **7.0208 Restoration of preference eligibles previously in career service.**

An individual employed in the career service, who is ordered to active or reserve duty in the armed forces of the United States, is entitled within 120 days after his release from duty under honorable conditions, to be restored to the position in the career service held by him when ordered to duty.

**History:** 1971, PL 12-27 § 5.

#### **7.0209 Preference eligibles separated or furloughed from career service.**

A preference eligible who has been separated or furloughed from the career service without delinquency or misconduct, on request, is entitled to have his name placed in the appropriate register or applicant supply file for every position for which his qualifications have been established in the manner specified in section 7.0206.

**History:** 1971, PL 12-27 § 6.

#### **7.0210 False statements in employment application.**

Any person who willfully makes false statements concerning a material matter on any application for employment with the government shall be fined in an amount not to exceed \$100, or imprisoned for not more than 6 months, or both.

**History:** 1962, PL 7-22.

#### **7.0211 Probationary period.**

(a) Employees appointed without time limitation in the career service shall serve a probationary period of 1 calendar year from the effective date of such appointment during which period their service may be terminated at any time without a hearing as provided under section 7.0803.

(b) The purpose of the probationary period is to provide an opportunity for the employee to demonstrate whether or not his retention as part of the permanent work force is in the best interests of the government.

(c) When considered appropriate, separation during the probationary period shall be recommended in writing to the Director of Manpower Resources by department heads or other authorized operating officials, giving the reason or reasons for such recommendation.

(d) If the recommendation is followed, the Director of Manpower Resources shall furnish the employee concerned with a written notice advising him that he will be separated on a particular date, and stating the reason or reasons therefor and that he has

no hearing rights.

(e) In the case of all probationers, the Director of Manpower Resources shall, 2 months prior to the expiration of the probationary period, request from the appropriate department head or other operating official, a recommendation as to whether the employee should be retained beyond the expiration of his probationary period. Such recommendations shall be in writing. In the event retention is not recommended, the separation notification procedure described in subsection (d) shall be followed.

**History:** 1962, PL 7-22; 1967, PL 10-30; 1971, PL 12-27 § 7; amd 1973, PL 13-6.

**Amendments:** 1973 Subsection (f): deleted.

**Case Notes:**

Subsection (b) gives executive broadest possible discretion in terminating probationary employees. Government worker with no contractual or statutory right to continued employment may be fired for any reason or no reason at all, except where reason itself constitutes a violation of applicable constitutional rights. *Banks v. A.S.G.*, 4 A.S.R.2d 113(1987).

Where evidence indicated that decision to terminate probationary employee was made by appropriate executive official with Governor's approval rather than by advisory board, court would not question the decision. A.S.C.A. §§ 7.0102, 7.0206, 7.0211. *Banks v. American Samoa Government*, 4 A.S.R.2d 113 (1987).

Judiciary must not substitute its own judgment for that of executive branch on what is in "the best interest of the government." A.S.C.A. § 7.0211. *Banks v. American Samoa Government*, 4 A.S.R.2d 113 (1987).

**7.0212 Residency requirement.**

All members of the career service shall be residents of American Samoa during the term of their employment.

**History:** 1962, PL 7-22; 1967, PL 10-30; 1970, PL 11-98.

**7.0213 Annual physical examinations.**

All members of the career service shall take annual physical examinations.

**History:** 1962, PL 7-22; 1967, PL 10-30; 1971, PL 12-27 § 2.

**7.0214 Bonding of employees.**

(a) Subject to subsection (b), the head of each department and independent agency in the executive branch of the government shall obtain, under rules adopted by the Treasurer, blanket, position schedule, or other types of surety bonds covering the officers and employees of the departments or independent agencies who are required by law or administrative rule to be bonded. Bonds obtained under this section shall be of the most economical type available for the number and type of personnel to be bonded and shall be conditioned upon the faithful performance of the duties of the individual or individuals so bonded. The bond premium may cover a period not exceeding 2 years and shall be paid from any funds available for the payment of administrative expenses at the time the premium becomes payable. Whenever officers or employees are covered by a bond under authority of this section, the surety or sureties on any existing bond of those officers or employees shall not be liable for any defaults occurring subsequent to the date of the new coverage. For purposes of this section, the term "faithful performance of the duties" shall include the proper accounting for all funds or property received by reason of the position or employment of the individual or individuals so bonded and all duties and responsibilities imposed upon individuals by law or by rule adopted under law.



(b) If, in the opinion of the head of the department or independent agency concerned, the premium cost for bonds procured under this section covering officers or employees in the executive branch of the government will exceed the rate of \$150 a year, the procurement of the bonds shall be made by the head of the department or independent agency only after advertising a sufficient time previously for proposals for the furnishing of the bonds, except that the advertising for proposals shall not be required when the public exigencies require the immediate procurement of the bonds.

(c) The Treasurer shall transmit to the Governor for submission to the Secretary of the Interior by 30 September each year a comprehensive report of the operations of the departments and independent agencies under this section. The report shall include, among other matters, information, in summary and in detail, with respect to operations under this section, setting forth:

(1) the number of officers and employees covered by bonds procured under this section;

(2) the number and types of bonds procured under this section and the individual penal sums thereof;

(3) the amounts of the premiums paid for bonds procured under this section; and

(4) other information as may be necessary to enable the Secretary of the Interior to determine the results of operations under this section.

(d) Procedures for taking exceptions to holders of bonds by another supervisory authority shall be established by rule by the Treasurer under the rules adopted under the Administrative Procedure Act, section 4.1001 et seq., implementing this act. Also, procedures of not releasing bonds until all exceptions have been satisfied shall be adopted under the rules.

**History:** 1977, PL 15-49.

### **Chapter 03**

### **(RESERVED)**

### **Chapter 04**

## **CLASSIFICATION**

### **Sections:**

#### **7.0401      Classes for positions— Reclassification.**

#### **7.0401      Classes for positions— Reclassification.**

(a) It shall be the duty of the Director of Manpower Resources to ascertain, record, and evaluate the duties and responsibilities of all positions in the career service and to establish classes for positions which are sufficiently similar so that they can be described by the same title and carry a comparable rate of pay, so that recruitment standards can be set on the same basis.

(b) The class titles so established shall be used in all official personnel accounting and budget transactions.

(c) Positions may be reclassified on written request of a department head or upon routine review of the plan by the Director of Manpower Resources, who may require a competitive examination for filling a position which has been reclassified. A proposed

reclassification shall be made only if funds are available.

**History:** 1962, PL 7-22; 1967, PL 10-30.

## **Chapter 05**

### **ALCOHOL AND DRUG TESTING OF AMERICAN SAMOA GOVERNMENT EMPLOYEES**

#### **Sections:**

- 7.0501 Purpose.**
- 7.0502 Scope.**
- 7.0503 Definitions.**
- 7.0504 Lead department.**
- 7.0505 Prohibitions.**
- 7.0506 Occasions for employee testing.**
- 7.0507 Call back duty.**
- 7.0508 Return to duty testing.**
- 7.0509 Follow-up testing.**
- 7.0510 Alcohol and Drug Testing Procedures.**
- 7.0511 Collection of samples – Privacy.**
- 7.0512 Refusal of test.**
- 7.0513 Medical review of test results.**
- 7.0514 Action—Positive test.**
- 7.0515 Confidentiality and release of information.**

**Reviser’s comment:** 2018, Section 1 of PL 35-15 created chapter 05 in Title 7

#### **7.0501 Purpose.**

(a) The American Samoa Government (“ASG”) establishes this Act to protect its employees and the general public by fostering a workplace environment that is free from the compromising influence of alcohol and drugs.

(b) The purpose of this chapter is to ensure that appropriate and uniform alcohol and drug testing procedures are employed throughout the ASG, to protect the privacy rights of persons tested and to achieve reliable and accurate results.

**History:** 2018, PL 35-15.

#### **7.0502 Scope.**

This law applies to all employees of ASG, applicants for ASG employment, elected officials, political appointees, and contract workers.

**History:** 2018, PL 35-15.

#### **7.0503 Definitions.**

For the purposes of this Program, the following definitions apply:

(a) “Alcohol” means the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols, including methyl or isopropyl alcohol and including any medication containing alcohol.

(b) “Alcohol Concentration (AC) or Breath Alcohol Concentration (BAC)” refers to the amount or concentration of alcohol within a person’s body. And evidential breath test (“EBT”) may be used to measure the concentration of alcohol in a person’s breath, and that measurement is expressed in grams of alcohol per 210 liters of breath.

(c) “Alcohol Use” means the consumption of any beverage, mixture or preparation, including any medication, containing alcohol.

(d) “Breath Alcohol Technician (BAT)” is a person who instructs and assists employees in the alcohol testing process and operates an evidential breath-testing device.

(e) “Collection Site” means a place used for conducting drug and/or alcohol tests.

(f) “Collector” is a person who instructs and assists employees at a collection site, who receives and makes an initial inspection of the specimen provided by those employees, and who initiates and completes the Chain of Custody Form provided by ASG/HR of the specimen taken. Collector may also be the Medical Review Officer (MRO).

(g) “Confirmation Test” means, for drug testing, a second analytical procedure, gas chromatography/mass spectrometry, to identify the presence of a specific drug. ASG/HR shall initiate a confirmation test for alcohol, as a second test to confirm the alcohol concentration of the initial alcohol screening test (e.g. EBT) that resulted in a finding of 0.02% or greater.

(h) “Confirmed Positive Test” for drugs means a finding based on a positive initial or screening test result has been confirmed by another positive test on the same sample.

(i) “Counseling” means assistance provided by qualified professionals to employees, especially, but not limited to those employees whose job performance is, or might be, impaired as a result of alcohol and/or illegal drug use or a medical-behavioral problem. Such assistance may include short-term counseling and assessment, crisis intervention, referral to outside treatment facilities, and follow-up services to the employee after completion of treatment and return to work.

(j) “Drug Certification” means a written assurance signed by an employee with known past illegal drug involvement, which states that said employee will refrain from using or being involved with illegal drugs while employed with ASG. This drug certification shall be a condition for obtaining or retaining employment with ASG.

(k) “Elected official” means any person who is elected to office for either the American Samoa Government or any political office in the territory.

(l) “Employee” means any employee of ASG, including but not limited to elected officials, political appointees, and contract workers with ASG. For the purpose of pre-employment/pre-duty testing the term employee includes a person applying for employment with ASG.

(m) “Employee Assistance” means a program of counseling, referral, and educational services concerning illegal drug use and other medical, mental, emotional, or personal problems of employees, particularly those which adversely affect behavior and job performance.

(n) “Evidential Breath Testing Device (EBT)” means a device that has been approved by the National Highway Traffic Safety Administration for the purpose of verifying the amount or concentration of alcohol within a person’s body.

(o) “Illegal Drug,” subject to the further provisions herein, means a controlled substance, as specified in A.S.C.A. Title 13, Chapter 10, et. Seq. and CFR Title 21, Chapter II, Part 1308, Schedule of Controlled Substances.

(p) “Independent contractor” means a person or entity that undertakes to perform work for ASG pursuant to a contract, express or implied, without being subject to the control of ASG except as to the result of the work performed.

(q) “Medical Review Officer (MRO)” means a person who is a licensed physician and who is responsible for receiving and reviewing laboratory results generated by an ASG’s drug testing procedures under this Chapter and evaluating medical explanations for certain drug test results.

(r) “Occurrence” means any incident that is a deviation from the expected behavior or planned course of events in connection with any ASG employee or ASG-controlled operation that impacts or could impact public health, public safety, or the environment. Incidents having such significance include but are not limited to the following:

- (1) Injury or fatality to any person;
- (2) An accident, explosion, or significant damage to property;
- (3) An accidental release of pollutants; or
- (4) Any moving violation that results in a citation.

(s) “Political Appointee” means any person appointed to a position, with or without compensation, with either the American Samoa Government, or any semi-autonomous authorities or quasi-governmental entities.

(t) “Random Testing” means the unscheduled, unannounced drug testing of randomly selected employees by a process designed to ensure that selections are made in a non-discriminatory manner.

(u) “Reasonable Suspicion” refers to an articulated belief that is drawn from particularized facts and reasonable inferences from those facts that an employee improperly uses or used alcohol or illegal drugs.

(v) “Referral” means the direction of an employee toward an Employee Assistance Program or to an outside treatment facility by the Employee Assistance Program professional, for assistance with prevention of illegal drug use, treatment, or rehabilitation from alcohol or illegal drug use or other problems. Referrals to an Employee Assistance Program can be made by the employee (self-referral) or immediate supervisors or managers or by the Director of Human Resources or his/her designee.

(w) “Rehabilitation” means a formal treatment process aimed at the resolution of behavioral-medical problems, including alcohol or illegal drug use, and resulting in such resolution.

(x) “Safety-Sensitive Position” means:

(1) Any position, the performance of which would present a serious and immediate danger to the employee, co-workers, or the public if the employee is under the influence of alcohol or drugs or which demands the exercise of discriminating judgment or a high degree of care and caution where the health or safety of the employee, co-workers, or the public is significantly involved or impacted; or

(2) Any position directly related to enforcement of any territorial or federal law prohibiting the illegal use, sale, manufacture, or transporting of alcohol or drugs.

(y) “Substance Abuse Professional (SAP)” means a licensed physician, or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and drug-related disorders. The role of the SAP in the program is to evaluate the need for a rehabilitation plan for employees referred to the

SAP, develop a rehabilitation program as required, monitor and assist the employee in their progress to return to full duties and schedule return-to-duty and follow-up tests.

**History:** 2018, PL 35-15.

#### **7.0504           Lead department.**

All policies and procedures under this Chapter shall be created and managed by the American Samoa Government Department of Human Resources. ASG/HR shall enforce all sections of this Chapter.

**History:** 2018, PL 35-15.

#### **7.0505           Prohibitions.**

The following are prohibited actions for employees and may be grounds for termination:

(a) Alcohol:

(1) To report for or remain on duty with a breath alcohol concentration (BAC) of 0.02% or greater; BAC of 0.04% or greater requires a return to duty test, as stated in section 7.0508 herein along with a clearance from a Substance Abuse Professional (SAP).

(2) To possess alcohol (including possession of prescription or over the counter medicines containing alcohol) while on the job.

(3) To use alcohol while performing a safety sensitive function.

(4) To use alcohol 4 hours prior to performing safety-sensitive functions.

(5) To use alcohol 8 hours following an accident, or before a post-accident alcohol test is completed.

(6) To refuse to take a required alcohol test.

(b) Drugs:

(1) To use any of the following illegal drugs or classes of drugs: marijuana; cocaine; opiates; phencyclidine; amphetamines and/or controlled substances listed in A.S.C.A. §13.10 et. seq., and CFR Title 21, Chapter II, Part 1308, Schedule of Controlled Substances, except as prescribed by a physician, and then only if the physician has advised the employee that the drug will not adversely affect the employee's ability to safely perform his job responsibilities.

(2) To report or remain on duty while on any of the above named drugs.

(3) To refuse to take a required drug test.

**History:** 2018, PL 35-15.

#### **7.0506           Occasions for Employee Testing.**

Occasion for an ASG employee to be tested for alcohol and drugs shall include but not be limited to the following:

(a) New Applicant Testing.

(1) All new applicants for ASG employment will be subject to testing for the use of illegal drugs before final selection for employment, in conjunction with requirement under A.S.C.A. 7.0213 Annual Physical Exams.

(2) Applicants with a history of illegal drug use may not be selected.

(3) Applicants who refuse to submit to a drug test, or tests positive, shall not be selected.

(4) ASG, under the direction of Human Resources (“HR”), shall schedule the test date and time.

(5) Applicants will not be permitted to reschedule a drug test, except for an emergency.

(6) Applicants are required to provide a release for ASG/HR to verify their last two (2) years of employment history. This release shall also provide for the obtaining of results from any prior drug tests.

(b) Occurrence Testing.

(1) Drug and alcohol tests are required as soon as reasonably possible following an Occurrence.

(2) The alcohol test must be conducted within 4 hours of the Occurrence.

(3) The drug test must be conducted within 24 hours of the Occurrence.

(c) Reasonable Suspicion Testing.

(1) All employees may be tested for the improper use of alcohol or illegal drugs, if the behavior of such an employee creates the basis for reasonable suspicion of the improper use of alcohol or illegal drugs. Two or more supervisory or management officials, at least one of whom is in the direct chain of supervision of the employee, must agree and document that such testing is appropriate.

(2) Reasonable suspicion may be based upon, among other things, observable behavior, such as direct observation of:

(A) The use or possession of alcohol or illegal drugs;

(B) Physical symptoms of being under the influence of alcohol or an illegal drug;

(C) A pattern of abnormal conduct or erratic behavior;

(D) Arrest or conviction of an alcohol or drug related offense, or the identification of the employee as the focus of a criminal investigation into illegal drug possession, use, or trafficking;

(E) Information that is either provided by a reliable and credible source or is independently corroborated;

(F) Evidence that an employee has tampered with a drug test; or

(G) Temperature of the urine specimen is outside the range of 32.5-37.7 degrees centigrade or 90.5-99.8 degrees Fahrenheit.

(3) The fact that an employee had a confirmed positive test for the use of illegal drugs at some prior time, or has undergone a period of rehabilitation or treatment, will not, in and of itself, be grounds for testing on the basis of reasonable suspicion.

(d) Safety-Sensitive Position Testing.

(1) Any employee who works in a Safety-Sensitive Position shall be randomly tested without reasonable suspicion.

(A) Random Drug Testing Requirements:

(i) Each year at least twenty-five percent (25%) of the Safety-Sensitive Positions will be tested for alcohol misuse. Fifty percent (50%) of said employees will be tested for drug use. Selection of employees for these tests will be conducted through a scientifically valid random-position number selection method, a method that is reasonable and acceptable. These unannounced tests will be conducted throughout the year. Each Safety-Sensitive employee will have an equal chance of selection each time a random test is administered.

(2) Identification of Safety-Sensitive Position.

(A) The Safety-Sensitive Positions that are subject to random drug testing are: any positions identified by ASG/HR which entail safety-sensitive duties where failure of

an employee to adequately discharge his or her position could significantly harm him or herself, co-workers, public health, public safety or the environment.

(B) Safety-Sensitive Positions include but are not limited to the following;

(i) Police officers, other law enforcement officers, Homeland Security Special Agents, Immigration Officers, Customs Officers;

(ii) Firemen, Emergency Medical Technicians;

(iii) Public health officers, quarantine officers; or

(iv) Any ASG employee with an employee driver's license, who operates a motor vehicle, including water-borne vessels, for ASG as a part of their job responsibilities.

(C) Any other position determined by the ASG/HR Director to be safety-sensitive position shall be designated as a safety-sensitive position for purposes of this chapter.

**History:** 2018, PL 35-15.

#### **7.0507 Call back duty.**

Employees who are called in to work outside of their regularly-scheduled hours shall inform their ASG supervisor if they have consumed alcohol within the previous four hours, have reason to believe that their alcohol concentration level would be 0.02% BAC or greater, or would otherwise be ineligible for duty due to other prohibitions of this Chapter. The disclosure shall not subject the employee to disciplinary action; however, ASG is not required to offer work to the employee.

**History:** 2018, PL 35-15.

#### **7.0508 Return to Duty Testing.**

Whenever an employee is referred to a substance abuse professional to determine the need for assistance in resolving difficulties associated with drugs or alcohol prohibitions, a return to duty test is required. Only the SAP may require the employee to take both alcohol and drug tests. Test results must be less than 0.02% BAC for alcohol and negative for controlled substance use before an employee can return to a safety-sensitive position.

**History:** 2018, PL 35-15.

#### **7.0509 Follow-up testing.**

If the SAP determines that an employee in a safety-sensitive position, following a satisfactory "Return to Duty Test", is in need of additional assistance to maintain his/her resolve, said employee will be subject to unannounced follow-up tests. The SAP may require that both drug and alcohol tests be administered, and may prescribe the length (e.g. up to 60 months) and frequency (e.g. at least 6 in the next 12 months) of those unannounced follow-up tests. Said tests will be in addition to any other alcohol and drug tests that the employee may be subject to.

**History:** 2018, PL 35-15.

#### **7.0510 Alcohol and Drug Testing Procedures.**

(a) Alcohol tests. Alcohol testing shall be done using one or more of the following tests, as determined by the MRO:

(1) Alcohol Concentration (AC) or Breath Alcohol Concentration (BAC) shall be collected by means of an evidential breath test (EBT), as administered by an individual who is trained, authorized and certified to conduct an EBT.

(2) Blood test by a certified collector or technician.

(3) Alcohol Testing – Initial Screening Test. ASG may use an EBT or any other industry accepted test that is considered to be reasonable by the MRO to conduct an initial screening for alcohol misuse.

(4) Alcohol Testing – Confirmation Test. An evidential breath-testing (EBT) device approved by the National Highway Traffic Safety Administration will be used to confirm BAC. A breath alcohol technician (BAT), who is certified to operate the EBT device, will conduct the testing. The BAT will immediately inform the ASG/HR manager of any confirmed test result of 0.02% or higher BAC. The employee with a 0.02% or higher will be released from duty for 24 hours. In addition, employees with test results of 0.04% or higher BAC will be restricted from performing in a safety-sensitive position until released by the SAP and only after having a negative test result(s).

(b) Drug Test - Initial drug screening test shall be done using one or more of the following tests, as determined by the MRO:

(1) Saliva, urine, blood, hair testing by a certified collector or technician; or

(2) Any other acceptable test as determined by the MRO.

(c) Drug Testing – Confirmation Test:

(1) Employees with a negative initial drug-screening test will not be subject to a confirmation test, nor will they be contacted.

(2) The Medical Review Officer (MRO) will contact employees who test positive from improper alcohol or drug use. The employee will have an opportunity to explain to the MRO that the results were not due to the improper use of alcohol or illegal drugs.

(3) Employees may select a third-party certified laboratory to analyze their sample at their own cost. The selection of a certified third party laboratory shall be approved by the MRO. The employee has 72 hours from the MRO notification (or from their supervisor if the MRO is unable to contact the employee) to exercise this option; otherwise the confirmation test will be conducted by the test vendor's laboratory.

(d) All drugs and alcohol tests and procedures will be conducted in compliance with regulation 49 CFR §40 et. Seq. (Procedures for Transportation Workplace Drug and Alcohol Testing Programs), as applicable and appropriate for ASG, until local policies and procedures are adopted.

(1) ASG Human Resource Department shall write the policies and procedures applicable to ASG within twelve (12) months of the date of passage of this law.

(e) Leave shall not be granted after an employee has been informed that he/she is required to submit to testing.

**History:** 2018, PL 35-15.

#### **7.0511 Collection of Samples—Privacy.**

(a) Procedures for providing urine specimens must allow employee privacy, unless there is reason to believe that a particular employee may alter or substitute the specimen to be provided. ASG shall utilize a chain of custody procedure for maintaining control and accountability from point of collection to final disposition of specimens, and testing laboratories shall use appropriate cutoff levels in screening specimens to determine whether they are negative or positive for a specific drug, consistent with 49



CFR §40 et. seq. If there is not a sufficient amount of urine, additional urine will be collected in a separate container. The employee may be given reasonable amounts of liquid and a reasonable amount of time in which to provide the specimen required. The employee and the Collector must keep the specimen in view at all times. When collection is complete, the partial specimens will be combined in a single container. In the event that the employee fails to provide a sufficient amount of urine, the amount collected will be noted and documented. In this case, the Collector will consult with the employee's supervisor to determine the next appropriate action. This may include deciding to reschedule the employee for testing, to return the employee to his or her work site and initiate disciplinary action, or both.

**History:** 2018, PL 35-15.

**7.0512 Refusal of test.**

- (a) Any of the following actions may constitute a refusal to test:
  - (1) Refusal to take a test either by statement or action;
  - (2) Refusal to sign appropriate forms as required;
  - (3) Failure to provide adequate breath for alcohol testing without a valid medical explanation;
  - (4) Behavior or conduct that clearly obstructs the testing process; and
  - (5) Leaving the scene of an accident without a valid reason before the tests have been conducted.

**History:** 2018, PL 35-15.

**7.0513 Medical review of test result.**

All test results shall be submitted for medical review by the MRO. The MRO will consider the medical history of the employee or applicant, as well as any other relevant biomedical information. When there is a confirmed positive test result, the employee or applicant will be given an opportunity to report to the MRO the use of any prescription or over-the-counter medication. If the MRO determines that there is a legitimate medical explanation for a confirmed positive test result, consistent with legal and non-abusive drug use, the MRO will certify that the test results do not meet the conditions for a determination of improper use of alcohol or illegal drugs. If no such certification can be made, the MRO will make a determination of improper use of alcohol or illegal drugs.

**History:** 2018, PL 35-15.

**7.0514 Action—Positive test.**

- (a) When an Applicant for employment has been tested and determined to have improperly used alcohol or an illegal drug, processing for employment will be terminated and the Applicant will be so notified.
- (b) When an employee is tested and determined to have improperly used alcohol or illegal drugs, if this is the first determination that said employee has misused alcohol or illegal drugs, the employee may be offered a reasonable opportunity for rehabilitation, consistent with ASG/HR's policies.
- (c) When an employee who is in a safety-sensitive position has been tested and determined to have used alcohol or an illegal drug, ASG shall immediately remove that employee from the safety-sensitive position.

(1) If rehabilitation is offered, any employee will be placed in a non-safety-sensitive position, provided there is such an acceptable position in which the employee can be placed during rehabilitation.

(2) If there is no acceptable non-safety-sensitive position, the employee will be placed on sick, annual, or other leave status, for a reasonable period sufficient to permit rehabilitation.

(3) The employee will not be protected from disciplinary action, which may result from violation(s) of work rules other than a positive test result for alcohol or illegal drugs.

(d) Any employee who refuses to take an alcohol or drug test or who is verified to have adulterated or substituted a alcohol or drug test result is considered to have failed the alcohol or drug test and will be treated according to paragraph (b) and (c) of this section.

(e) If after counseling or rehabilitation, it is determined that an employee can return to duty safely, ASG may offer the employee reinstatement in the same or a comparable position to the one held prior to counseling or rehabilitation.

(1) Failure to take the opportunity for rehabilitation, for the improper use of alcohol or illegal drugs, if it has been made available, will result in disciplinary action up to and including removal from employment with ASG.

(f) Any employee who is twice determined to have improperly used alcohol or illegal drugs shall in all cases be removed from employment with ASG.

(g) An employee who has been removed from a safety-sensitive position because of the use of alcohol or illegal drugs may not be returned to such position until that employee has:

(1) Successfully completed counseling or rehabilitation program as coordinated by ASG/HR;

(2) Undergone a urine drug test with a negative result; and

(3) Been evaluated by a SAP, who has determined that the employee is capable of safely returning to duty.

(h) After an employee is determined to have improperly used alcohol or illegal drugs has been returned to duty, the employee shall be subject to unannounced alcohol or drug testing, at intervals, for a period of 12 months.

**History:** 2018, PL 35-15.

#### **7.0515 Confidentiality and release of information.**

(a) Except as provided by law or regulation, all information, interviews, reports, statements, memoranda, and drug test results, written or otherwise, received or produced as a result of alcohol and drug testing under this chapter, shall remain confidential.

(b) Except as provided by law or regulation, ASG/HR shall report drug test results to the Director of the employee's department. Neither the Director nor a department shall release information on tests required under this policy.

(c) Written test results will be provided to employees who tests positive for either or alcohol or drugs or both.

(d) This section does not prohibit consultations with legal counsel regarding drug-testing information.

**History:** 2018, PL 35-15.

## **Chapter 06**

### **CONTRACT EMPLOYEES**

#### **Sections:**

**7.0601 Prohibited from entering private business.**

**7.0602 Conviction of a crime involving stealing, embezzlement or misappropriation as a ground for ineligibility for employment or for termination of contract.**

**7.0601 Prohibited from entering private business.**

The Director shall provide in contracts with contract employees a provision prohibiting them from engaging in private business in American Samoa, either directly or indirectly in any form whatsoever, during the terms of their contracts.

**History:** 1977, PL 15-43.

**7.0602 Conviction of a crime involving stealing, embezzlement or misappropriation as a ground for ineligibility for employment or for termination of contract.**

A person convicted of a crime involving stealing, embezzlement, or misappropriation of property, which is classified as a felony in American Samoa, shall be ineligible for employment as a contract employee with the government. A contract employee of the government, who is subsequently convicted of a felony crime involving stealing, embezzlement or misappropriation of property, shall be terminated immediately upon the judgment and sentence of conviction becoming final.

**History:** 1998, PL 25-38 § 3.

## **Chapter 07**

**(RESERVED)**

## **Chapter 08**

### **TERMINATION OF EMPLOYMENT— DISCIPLINARY MEASURES**

#### **Sections:**

**7.0801 Grounds for demotion, suspension, or removal.**

**7.0802 Suspension.**

**7.0803 Demotion and termination.**

**7.0804 Failure to report for duty.**

**7.0805 Resignation.**

**7.0806 Abolishment of positions.**

**7.0807 Prohibited political acts—Penalty.**

**7.0801 Grounds for demotion, suspension, or removal.**

Employees in the career service may be demoted, suspended, or removed for below standard job performance, misconduct on the job, misconduct off the job which reflects

adversely on the government, conviction of a felony, sentence to prison for 30 days or more upon conviction of a crime, or violation of standards established administratively which govern employee conduct and deportment, including but not limited to, the proper use and penalty for misuse of government property.

**History:** 1962, PL 7-22; 1967, PL 10-30; amd 1979, PL 16-45 § 1.

**Amendments:** 1979 Added inclusion at end of section.

**Reviser's Comment:** Section 2 of PL 16-45 provided: "All department, agency and instrumentality heads having vehicles under their control and authority must adopt rules under the Administrative Procedure Act 4.1001 et seq. for their proper and effective use within the meaning of the disciplinary measures included in 7.0801."

### **7.0802 Suspension.**

(a) Any employee in the career service serving under an appointment without time limitation, regardless of whether he has completed his probationary period, may be suspended without pay as a disciplinary measure for a period not to exceed 30 calendar days.

(b) When considered appropriate, such action shall be recommended in writing to the Director of Manpower Resources by department heads or other authorized operating officials, who shall supply the Director with evidence in support of the recommended action.

(c) If the recommendation is followed, the Director of Manpower Resources shall in writing notify the employee concerned regarding the specific dates of the suspension period, the reasons therefor, the corrective action to be taken by the employee and the consequences which will follow if there is a continuance or repetition of the cause for the suspension.

**History:** 1962, PL 7-22; 1967, PL 10-30.

#### **Case Notes:**

Inherent, executive authority exists to suspend an employee before his removal is effective under circumstances which would make continued performance of regular duties detrimental to the territorial government's interests; however, this action may not be arbitrary or capricious. A.S.C.A. § 7.0802; A.S.A.C. §§ 4.0801, 4.0802(e). *Sala v. American Samoa Gov't*, 21 A.S.R.2d 14 (1992).

### **7.0803 Demotion and termination.**

(a) Any employee in the career service serving under an appointment without a time limitation who has completed his probationary period may be removed for cause or demoted on any ground set out in 7.0801.

(b) When considered appropriate, such action shall be recommended in writing to the Director of Manpower Resources by department heads or other authorized operating officials, who shall supply the Director with supportive evidence.

(c) If the recommendation is followed, the Director shall in writing notify the employee of the nature of the charges against him, that he is subject to removal or demotion 30 calendar days from the date of the notice, and that he may request a hearing before the Personnel Advisory Board within 10 calendar days of the date he receives the notice.

(d) The decision of the Personnel Advisory Board, or of the Director of Manpower Resources in the event no hearing is requested and held, shall be final and shall be made within the 30-day notice period provided in subsection (c).

(e) Employees serving under temporary appointments as defined in subsection (a) of 7.0207 may be terminated at any time without notice or the procedures described in this section.

**History:** 1962, PL 7-22; 1967, PL 10-30; amd 1985, PL 19-12 § 1.

**Amendments:** 1985 catchline: deleted "suspension" and added "termination".

**Case Notes:**

Appeal under provisions of 4.1040 et seq. from the Final decision of the personnel advisory board permitted. Reed v. Personnel Advisory Board, ASR (1977).

**7.0804 Failure to report for duty.**

When an employee, without good cause, fails to report for duty for 5 or more consecutive workdays, it shall be considered that he has abandoned the position and his department head may recommend that the Director of Manpower Resources take appropriate action for termination of the appointment and replacement of the employee.

**History:** 1962, PL 7-22.

**7.0805 Resignation.**

Any employee may resign his position for any reason. The resignation should be submitted in writing and shall be accepted upon a satisfactory showing that the employee has returned all government owned equipment and supplies used by him in his employment and that he is not indebted to the Government or the Development Bank of American Samoa.

**History:** 1962, PL 7-22.

**7.0806 Abolishment of positions.**

(a) Abolishment of an encumbered position in the career service due to lack of work or funds, or reorganization, and separation of the incumbent from such position, shall constitute a reduction in force.

(b) The Director of Manpower Resources shall establish and administer rules and regulations governing the disposition of employees affected by reductions in force, which shall give due recognition to merit and fitness, length of service, tenure, and type of appointment, thus insuring equitable treatment of the latter.

**History:** 1962, PL 7-22.

**7.0807 Prohibited political acts—Penalty.**

(a) It is unlawful for an employee of the government to:

(1) use his official authority or influence as an officer or employee of the government for the purpose of interfering with or affecting the result of an election or a nomination for office;

(2) directly or indirectly suggest, advise, command, coerce, or attempt to coerce an officer or employee of the government to pay, lend, or contribute anything of value to any person, committee, organization, agency, or party for political purposes;

(3) use property belonging to the government to directly or indirectly benefit or support any political candidate or political campaign.

(b) Any officer or employee of the government who violates this section is subject to

suspension or dismissal from his position with the government, and shall be fined as for a class A misdemeanor.

(c) Employees of the government, including contract and career service employees, may actively participate in the management of political campaigns, their own included, if the participation is after the employees' normal working hours and off the premises of his place of employment, while on annual leave, or while on leave without pay, so long as paragraphs (a)(1), (a)(2) and (a)(3) and 7.1201 and subsection (f) of 4.0102 are not violated.

**History:** 1972, PL 12-23 §§ 2, 3;amd 1973, PL 13-33; 1977, PL 15-47 § 1;amd 1980, PL 16-90 § 6.

Amendments: 1973 Subsection (a)(1): rephrased.

1977 Subsection (a)(3), prohibiting government employee participation, except as a candidate, in a political campaign, was deleted, and subsection (a)(4) was redesignated (a)(3).

Subsection (c): added.

1980 Amended to conform with penalties provided for in Title 46, Criminal Justice.

## **Chapter 09**

### **(RESERVED)**

## **Chapter 10**

### **COMPENSATION**

#### **Sections:**

- 7.1001 Compensation plan.**
- 7.1002 Per diem rates within the Territory—Tutuila, Manu'a, Swains Island.**
- 7.1003 Incentive awards.**
- 7.1004 Overtime compensation of gubernatorial appointees disallowed.**

#### **7.1001 Compensation plan.**

(a) A compensation plan shall be established for the career service, which will permit the payment of either an annual salary or hourly wage dependent on the type of work performed. The plan shall provide for maximum and minimum salary and wage rates and such intermediate steps as seem appropriate.

(b) No position may be assigned a rate of pay greater than the maximum or less than the minimum rate established for the level in the compensation plan with which such position is identified in accordance with the provisions of 7.0401, except as permitted by rules of the Governor.

**History:** 1962, PL 7-22; 1967, PL 10-30.

#### **7.1002 Per diem rates within the Territory—Tutuila, Manu'a, Swains Island.**

The Director of Manpower Resources shall adopt rules under the Administrative Procedure Act, 4.1001 et seq. consistent with other equitable per diem rates, a schedule of per diem rates for travel between the island of Tutuila, the Manu'a Group of Islands and Swains Island.

**History:** 1980, PL 16-66 § 2.

### **7.1003 Incentive awards.**

The Government shall adopt an incentive award program to provide a method of recognizing employees who show exceptional resourcefulness or skills, or perform exceptional acts.

**History:** 1967, PL 10-30.

### **7.1004.1 Overtime compensation of gubernatorial appointees disallowed.**

All gubernatorial appointees are not entitled to overtime compensation notwithstanding that they may have worked beyond regular hours. However, the Governor may, at his discretion, authorize that such appointees take additional leave with pay to compensate them for work performed in excess of 40 hours per week, but all such leave must be documented and authorized by the Governor in advance.

**History:** 1998, PL 25-26 § 1.

## **Chapter 11**

**(RESERVED)**

## **Chapter 12**

### **LEAVES AND HOLIDAYS**

#### **Sections:**

- 7.1201 Regulations governing leave.**
- 7.1202 Sick leave.**
- 7.1203 Annual leave.**
- 7.1204 Vacations for teaching personnel.**
- 7.1205 Paid holidays.**

### **7.1201 Regulations governing leave.**

(a) Leave without pay, annual leave and sick leave shall be granted in accordance with regulations issued by the Governor; provided, however, that any regulation to the contrary notwithstanding, leave without pay shall be freely granted to any government employee for the purpose of campaigning as a candidate for public office in American Samoa for a period beginning 30 days before and ending 10 days after the date set for the election.

(b) Leave without pay may not be granted for periods of more than 1 year unless otherwise provided in the regulations, and then only for reasons which are determined to be in the interest of the government.

**History:** 1962, PL 7-22.

### **7.1202 Sick leave.**

(a) "Sick leave" means absence from duty because of illness or other physical disability or exposure to contagious disease.

(b) An employee given leave with pay on account of sickness for longer than 3

working days must supply on demand a certificate from a physician or medical practitioner evidencing illness.

(c) Sick leave shall accumulate at the rate of one-half day per biweekly pay period, and the accumulation is not limited.

(d) Employees terminated for reasons other than retirement, employees who are medically separated and employees who retire with the maximum service credit of 30 years are entitled to compensation for unused accrued sick leave at the rate of 50 percent of sick leave in excess of 239 hours.

**History:** 1962, PL 7-22; 1970, PL 11-107; amd 1984, PL 18-32 § 1.

**Amendments:** 1984 Subsection (d) added.

### **7.1203 Annual leave.**

(a) Employees in the career service shall be entitled to annual leave, which shall accrue as follows:

(1) four hours for each full biweekly pay period in the case of employees with less than 3 years of service;

(2) six hours for each full biweekly pay period, except that the accrual for the last full biweekly pay period in the year is 10 hours, in the case of employees with 3 but less than 15 years of service;

(3) eight hours for each biweekly pay period in the case of employees with 15 years or more of service.

(b) In determining years of creditable service for the purposes of subsection (a), there shall be included all time spent as a career service employee of the government and all time spent on active duty status with the armed forces of the United States, but for an employee who is a retired member of any of the uniformed services, such last mentioned time shall not be included unless:

(1) his retirement was based on disability resulting from injury or disease received in line of duty as a direct result of armed conflict, or caused by an instrumentality of war and incurred in the line of duty during a period of war (as defined in 38 U.S.C. §§ 101 and 301); or

(2) immediately prior to the effective date of this service he was employed in a civilian office to which the Annual and Sick Leave Act of the United States applies and, on and after that date, he continued to be employed in that office without a break in service of more than 30 days; or

(3) such service was performed in the armed forces during any war, or in any campaign or expedition for which a campaign badge has been authorized.

(c) The determination of the period service may be made on the basis of an affidavit of the employee, if other records are unavailable.

(d) In the case of an employee who is not paid on the basis of biweekly pay periods, the leave provided by this section shall accrue on the same basis as it would accrue if such employee were paid on the basis of biweekly pay periods.

(e) Any change in the rate of accrual of annual leave by an employee under the provisions of this section shall take effect as of the beginning of the pay period following the pay period, or corresponding period in the case of an employee who is not paid on the basis of biweekly pay periods, in which such employee completes the prescribed period of service.

(f) Annual leave not used by an employee shall accumulate for use in succeeding



years until it totals an amount not to exceed 60 days at the beginning of the first complete biweekly pay period, or corresponding period in the case of an employee who is not paid on the basis of biweekly pay periods, occurring in any year.

(g) The annual leave provided for in this section, including such leave as accrues to any employee during the year, may be granted at any time during such year as the heads of the various departments and agencies may prescribe.

(h) Notwithstanding the provisions of subsection (a), an employee shall be entitled to annual leave under this section only after having been employed currently for a continuous period of 90 days under one or more appointments without a break in service. In any case in which an employee completes a period of continuous employment of 90 days, there shall be credited to him an amount of annual leave equal to the amount which, except for this subsection would have accrued to him under subsection (a) during such period.

(i) The payment of money in lieu of leave shall not be allowed except on termination of employment.

(j) The days of leave provided for in this section mean days upon which an employee would otherwise work and receive pay, and shall be exclusive of holidays and all nonwork days established by law or administrative order.

(k) An employee shall be considered, for the purposes of this section, to have been employed for a full biweekly pay period if he has been employed during all of the days within such period which would be within his usual workweek and on which he would normally work.

**History:** 1962, PL 7-22; 1966, PL 9-26; 1967, PL 10-30; amd 1978, PL 15-71; 1981, PL 17-8 § 1; amd 1983, PL 18-8 § 1.

**Amendments:** 1978 Subsection (b)(2): substituted “service” for “sentence”, “that” for “such”, and “that” for “any such”.

1983 Subsection (a) amended to refer to number of hours rather than fractions of a day.

#### **7.1204 Vacations for teaching personnel.**

Upon recommendation of the Director of Education, the Governor may authorize a special system of vacations for teaching personnel.

**History:** 1962, PL 7-22.

#### **7.1205 Paid holidays.**

(a) The public holidays in American Samoa shall be paid holidays for government employees.

(b) If any public holiday is observed by federal employees on a different day from that specified in 1.0501, the day of observance for employees of American Samoa shall conform to that provided for federal employees.

(c) If any government employee is required to work on a public holiday, he shall be given an additional day's pay in lieu of the holiday.

(d) This section shall apply to all employees of the government, whether or not they are “employees” as defined in subsection (d) of 32.0303.

**History:** 1968, PL 10-72; 1969, PL 11-53; amd 1977, PL 15-12.

**Amendments:** 1977 Subsection (c): deleted provision that in the alternative, employee could be given another day off with pay.

**Research Guide:** For provisions regarding public holidays, see 1.0501.

## **Chapter 13**

**(RESERVED)**

## **Chapter 14**

### **GOVERNMENT EMPLOYEES' RETIREMENT FUND**

#### **Sections:**

- 7.1401 Purpose and intent.**
- 7.1402 Title of fund.**
- 7.1403 Definitions.**
- 7.1405 Legislative changes.**
- 7.1410 Board of Trustees—Term of office.**
- 7.1411 Board of Trustees—Duties.**
- 7.1412 Executive Director—Duties.**
- 7.1413 Repealed.**
- 7.1414 Repealed.**
- 7.1415 Employment of an assistant director, staff and professional services.**
- 7.1416 Indemnification.**
- 7.1420 Members of fund.**
- 7.1421 Persons ineligible for membership.**
- 7.1430 Credit.**
- 7.1431 Computation of credit.**
- 7.1432 Repealed.**
- 7.1433 Government contributions to fund.**
- 7.1434 Members' contributions to the fund.**
- 7.1435 Prohibition of deductions from ineligible employees' salaries.**
- 7.1436 Individual accounts for each member.**
- 7.1437 Interest of members in fund.**
- 7.1438 Transfer and attachment of interest prohibited.**
- 7.1439 Refund of contributions of separated employees—Return to employment.**
- 7.1440 Withdrawals by employees prohibited.**
- 7.1441 Retirement—Voluntary and mandatory--Elected officials may finish term.**
- 7.1442 Retirement payments.**
- 7.1442.1 Repealed.**
- 7.1443 Death benefits.**
- 7.1444 Investment of reserves exceeding current requirements.**
- 7.1444.1 Repealed.**
- 7.1444.2 Repealed.**
- 7.1444.3 Loans to the American Samoa Government.**
- 7.1444.4 Credit facility authorization—Assistance—American Samoa Medical Center Authority.**
- 7.1444.5 Loan to American Samoa Government—Renovations of Capital**

- Improvements and Projects.**
- 7.1445 Conflicts of interest—Prohibited acts.**
- 7.1446 Accounts and records.**
- 7.1447 Costs and expenses.**
- 7.1448 Actuarial surveys and valuations of the fund.**
- 7.1448.1 Administrative costs—Procedures for payment.**
- 7.1449 False representation—Penalty.**

**7.1401 Purpose and intent.**

(a) The purpose of the Government Retirement Fund shall be to provide retirement annuities for the employees of the government who become aged, thereby enabling the employees to accumulate reserves for themselves in order to meet, without prejudice or hardship, the hazards of old age upon termination of their government service. It is the further objective of this fund to act as a strong incentive in attracting qualified personnel to enter and remain in government service to the end that their talents may be utilized for the sake of achieving greater economy and efficiency in the administration of the government.

(b) It is the intention of this chapter that the payment by the government of the required contributions and all allowances, annuities, and benefits shall be obligations of the government.

**History:** 1971, PL 12-29, §§ 2, 26; amd 1986, PL 19-37 § 1.

**Amendments:** 1986 Subsection (b): inserted “and” before “benefits”, deleted “and administration expenses”.

**Reviser’s Comment:** Section 33.0203 of XXXIII Code Am. Samoa. 1961 Ed., provided that “The fund shall become operative as of September 1, 1971.”

**7.1402 Title of fund.**

The fund shall be known as the “American Samoa Government Employees’ Retirement Fund”. In such name or for the account thereof all of its business shall be transacted, all of its money invested, and all of its cash, securities and other property shall be held.

**History:** 1971, PL 12-29 § 3; amd 1986, PL 19-37 § 2.

**Amendment:** 1986 changed name of fund.

**7.1403 Definitions.**

As used in this chapter:

(a) “Actuary” means any actuary that is qualified and has been engaged by the Board to provide actuarial services.

(b) “Average annual salary” means the highest average annual salary received by a member during any 3 consecutive years of creditable service accruing to a member. Overtime compensation shall not be considered when calculating a member’s average annual salary.

(c) “Board” means the Board of Trustees provided for in this chapter as the agency responsible for the direction and operation of the affairs and business of the Retirement Fund.

(d) "Creditable service" means service credited for purposes of computation of benefits, and may not exceed 30 years of creditable service.

(e) "Early retirement date" means the date on which a member attains age 55 and 10 years of creditable service, or a later date elected by the member.

(f) "Employee" means any person in the employ of the government, in all occupational classifications.

(g) "Fiscal year" means the period of twelve consecutive months beginning on the first day of October each year.

(h) "Fund" means the "American Samoa Government Employees' Retirement Fund".

(i) "Fund-year" means a period of 12 consecutive months beginning 1 October 1981 or any 1 October thereafter.

(j) "Member" means any active, inactive or retired participant in the Fund.

(k) "Membership service" means service rendered on or after the operative date of the fund.

(l) "Normal retirement date" means the earlier of the dates on which the member attains age 65 and 5 years of creditable service or the member attains age 55 and 30 years of creditable service.

(m) "Operative date" means 1 January 1971, the date upon which the Fund is to begin operations.

(n) "Prior service" means service rendered prior to the operative date of the Fund.

(o) "Regular interest" means such rate as shall be fixed by the Board; provided, that for the first 5 years of operation of the Fund, the regular interest shall be 3 percent per year, compounded annually.

(p) "Salary" means the amount received by an employee for service.

(q) "Service" means actual employment by the government as an employee for salary or compensation, or service otherwise creditable as herein provided.

(r) "Spouse" means the husband or wife of, a member to whom the member was lawfully married.

(s) "Total service" means prior service, membership service and military service.

**History:** 1971, PL 12-29 § 5; 1981, PL 17-28 § 1; and 1986, PL 19-37 § 3; 1989, PL 21-22; 1996, PL 24-12; and 1997, PL 25-15.

**Amendments:** 1986 Subsection (b): added provisions on overtime compensation.

Subsection (c): replaced "system" with "retirement fund". Subsection (g): added.

Subsection (h): relettered from former subsection (g); name of fund changed according to 7.1402.

Subsections (i)—(s): relettered from former subsections (h)—(r).

Research Guide: For operative date of fund, see Reviser's comment, 7.0801,

#### **7.1405 Legislative changes.**

(a) The Senate and the House of Representatives shall establish retirement fund standing committees.

(b) All proposed legislation which concerns membership in the Fund, benefits paid by the Fund, contributions to the Fund, investment of Fund assets, or management of the Fund shall be referred to the Senate and House Retirement Fund Committees.

(c) Before the final vote is taken in either the Senate or House on any such legislation, the retirement fund committee of that body must submit to the voting members a written report from both the actuary and the Board of Trustees regarding the proposed legislation. The actuary's report shall indicate the financial impact of the legislation on the future solvency of the fund-and future benefit payments. The report of the Board of Trustees

shall contain its recommendations concerning the legislation: whether the Board supports or opposes it, any recommended changes, and the board's detailed reasons.

(d) Any legislation which is passed but which does not follow the procedures set forth in this section is null and void.

**History:** 1986, PL 19-37 § 18.

#### **7.1410 Board of Trustees—Term of office.**

(a) The responsibility for the proper administration of the fund and the direction of its policies shall be vested in a Board of Trustees consisting of seven members as follows: at least four members appointed by the Governor, who shall be members of the Fund having at the minimum of five years of service; and three members appointed by the Governor who shall not be members of the Fund but shall include among them at least two members with experience in the private sector business community. The Governor, in consultation with the Board will decide upon suitable candidates to fill any Board vacancy or vacancies. The Governor will choose his appointee(s) from among those individuals and send the name(s) to the Legislature for confirmation. The Board shall select its own chairman.

(b) The term of office of the members shall be 5 years except that the original appointees shall be appointed for terms of 2, 3, 4 and 5 years. Two board members, one a fund member and one not a member of the fund, shall serve the original terms of 2, 3, and 4 years. One board member, who shall be a member of the fund, shall serve for the original term of 5 years. As their terms expire, new members shall be appointed to fill vacancies and such appointments shall be made for terms of 5 years. The term of any incumbent member shall continue after its expiration except he shall be deemed resigned from the board and shall no longer serve if he, or his replacement, is not appointed and submitted by the Governor to the Legislature prior to the adjournment of any session during which the term expired, or if the term expires after adjournment of that session, then prior to the adjournment of the next session of the Legislature, regular or special. A trustee can be removed from the Board by the Governor only for breach of his fiduciary responsibilities or for just cause.

**History:** 1971, PL, 12-29 § 15; 1972, PL 12-48 § 6; amd 1983, PL, 18-3 § 1; 1986, PL 19-37 § 4; amd 1996, PL 24-12; 2013, PL 33-4.

Amendments 1983 Number of board members increased from 5 to 6.

1986 Subsection (a). amended generally.

Subsection (b): deleted "appointive"; added provision on removal of trustee for breach of fiduciary responsibility.

#### **7.1411 Board of Trustees—Duties.**

The Board of Trustees shall have, in addition to other duties arising out of this chapter. the following duties:

(1) establish and maintain an office, in the facilities provided by the government; provided however that should the trustees determine that facilities provided by the government are inadequate, appropriate facilities may be built or leased by the Fund, for the meetings of the Board and the keeping of the books, accounts and records of the fund; hold regular meetings bimonthly, and such special meetings as may be deemed necessary; and keep a full record of all of its proceedings, which shall be open to inspection by the public;

(2) hire an Executive Director who shall be directly responsible to the Board for the

management of the Retirement Fund and the Retirement Fund Office;

(3) provide for the installation of a system of accounts and records which will give full effect to the requirements of this chapter; adopt all necessary actuarial tables to be used in the operation of the Fund: and provide for the compilation of such statistical and financial data as may be required for actuarial valuations, periodic surveys and calculations;

(4) obtain such information from the participating members and the government as shall be necessary for the proper operation of the Fund;

(5) consider and pass upon all applications for annuities, benefits, refund and other payments, and authorize the expenditures for such purposes, in accordance with the provisions of this chapter; the Board may delegate this duty in whole or in part, to the executive director;

(6) accept any gift, grant, or bequest of any money or property of any kind, for the purposes designated by the grantor if such purposes are specified as providing cash benefits to some or all of the members or annuitants of the Fund: if no such purposes are designated, the same shall be credited to the account representing income from investments;

(7) have the accounts of the fund audited at the end of each fiscal year by a certified public accounting firm, and submit an annual report to the Governor and Legislature no later than 120 days following the close of the fiscal year embodying, among other things, a balance sheet showing the financial and actuarial condition of the Fund, a statement of income and expenditures for the year, a statement showing changes in the asset, liability and reserve accounts during the year, a statement of investments owned by the Fund, and such other financial and statistical data as are necessary for proper interpretation of the condition of the Fund and the results of its operation: the Board shall also cause to be published for distribution among the members a synopsis of such report;

(8) the board or its qualified agents or custodians shall hold, for the fund title to all assets of the Fund;

(9) establish and promulgate rules and regulations, not inconsistent with this chapter, determined necessary by the Board to carry out the purposes of this chapter.

**History:** 1971, PL 12-29 §§ 5, 16, 19; and 1986, PL 19-37 § 5; and 1989, PL 21-22.

**Amendments:** 1986 Subsection (2): added.

Subsection (3): renumbered from former subsection (2). Subsection (4): renumbered from former subsection (3).

Subsection (5): renumbered from former subsection (4); added provision on delegation of duties.

Subsection (6): renumbered from former subsection (5).

Subsection (7): renumbered from former subsection (6): replaced "competent accountant" with "certified public accounting firm": replaced "government as soon as possible" with "Governor and Legislature no later than 120 days"; deleted statements of investment acquired and disposed of during the year, including the description of each security, purchase or sale price and names of vendors and vendees".

Subsection (8): renumbered from former subsection (7).

Subsection (9): renumbered from former subsection (8).

#### **7.1412 Executive Director—Duties.**

The Executive Director shall be in charge of the administration of the detailed affairs of the Fund. He shall keep all books, records, files, and accounts of the Fund and receive all applications for annuities, benefits, and refunds. He shall prepare periodic reports relative to the operations of the fund and an annual report at the close of each fiscal year reflecting the results of the financial operations of the Fund and embodying all important financial and statistical data pertinent to its operation.

**History:** 1971, PL, 12-29 § 17; 1972, PL, 12-48 § 9; amd 1986, PL, 19-37 § 6.

**Amendments:** 1986 replaced “director of manpower resources shall be ex officio director of the fund and” with “executive director” and changed catchline accordingly.

#### **7.1413            Treasurer.**

**History:** 1971, PL 12-29 § 18, 1972, PL 12-48 § 10.

**Reviser’s Comments:** Repealed by PL 24-12 § 8.

#### **7.1414            Retirement officer.**

**History:** 1971, PL, 12-29 § 18.

**Reviser’s Comments:** Repealed by PL 19-37 § 19.

#### **7.1415            Employment of an assistant director, staff and professional services.**

(a) Subject to the approval of the Board, the Executive Director may employ an assistant director and such clerical, medical or other assistance as shall be necessary for the proper administration of the fund. Subject to the approval of the Board, the Executive Director may also engage actuarial, accounting or other professional services to assist in the preparation of the annual reports, to advise in matters of policy, and to make the periodic actuarial surveys. The executive director, assistant director and full-time clerical staff are employees of the government fund, under the direction of the Board.

(b) Legal services shall be provided by the government through the appropriate department. The board may, however, employ independent legal counsel if in its opinion, such services are necessary.

**History:** 1971, PL, 12-29 § 18; 1972, PL, 12-48 § 10;amd 1986, PL, 19-37 § 7; amd 1996, PL 24-12.

**Amendments:** 1986 Amended generally.

#### **7.1416            Indemnification**

The Fund shall save harmless, indemnify and defend all Trustees of the Board, officers, employees and attorneys of the fund from financial loss arising out of any claim, demand, suit or judgment by reason of alleged negligence or other act by such trustee, officer, employee, or attorney provided that such trustee, officer, employee, or attorney at the time of such alleged negligence or act was acting in good faith, with prudence and due diligence in the discharge of that person’s duties and within the scope of his employment, and that such damages did not result from the willful and wrongful act or gross negligence of such trustee, officer, employee or attorney.

**History:** 1996, PL 24-12.

#### **7.1420            Members of fund.**

The following employees shall be members of the Fund and subject to the provisions of this chapter:

(a) All employees, regardless of age or length of service, in the service of the government on the operative date of the fund, shall become members of the Fund by virtue of their employment.

(b) Any person on an approved leave of absence on the operative date, on account of disability or military service, shall be subject to membership as of such date as though he were in active service. If such leave of absence is for any other cause, such person shall be subject to the membership as of the operative date only if the leave of absence is extended, in the aggregate, for less than one year after the operative date.

(c) All qualified persons becoming employees after the operative date shall become members as a condition of employment.

(d) Elective officers, including but not limited to the Governor and Lieutenant Governor, and members of the Legislature; provided, however, any elective officer may decline membership in the fund by notifying the board in writing of his intent to do so.

(e) Employees of the Fund under the direction of the Board, unless ineligible pursuant to 7.1421.

(f) The employees of the Development Bank of American Samoa, unless ineligible pursuant to 7.1421, provided that the bank makes payment to the Fund for all prior service credit as determined jointly by the trustees of the fund and the directors of the bank.

**History:** 1971, PL, 12-29 § 6;amd 1979, PL, 16-15 § 1; 1986, PL 19-37 § 8; 1987, PL 20-13 § 1; 1989, PL 21-21 §1; 1996, PL 24-12.

**Amendments:** 1979 Subsection (d): added the Governor and Lieutenant Governor to the elective officers listed.

1986 Subsection (c): inserted "qualified" before "persons".

Subsection (d): inserted "and" before "members".

Subsection (e): added.

1987 Subsection (c): replaced "60" with "65".

Subsection (d): deleted "and the Delegate-at-Large to Washington. D.C".

#### **7.1421 Persons ineligible for membership.**

The following employees are not eligible for membership in the Fund:

(1) a person occupying a position whose duties will not permit service for more than 100 days per year;

(2) a person whose services are compensated on a fee basis;

(3) an independent contractor;

(4) a person whose employment is purely temporary, seasonal, intermittent, part-time or only for a specific project;

(5) an employee who is a member of any other retirement system except the military, and who is accruing creditable service in that system, unless the employee terminates his membership in the other system. This provision does not apply to former government employees with ten years vested interest; and

(6) an employee of the government for a definite or fixed term; however, notwithstanding the foregoing, judges, district, county and village officials and employees, department heads and executive level appointees, and noncareer service employees of the Legislature, other than contract employees are eligible for membership.

**History:** 1971, PL 12-29 § 4;amd 1979, PL, 16-53 § 5; 1981, PL 17-28 § 2; 1983, PL 15-1 § 1;amd 1985, PL 19-22 § 1;amd 1986, PL 19-37 § 9; 1987, PL 20-28 § 1; 1989, PL 21-22; 1996, PL 24-12.

**Amendments:** 1979 Paragraph (7): added proviso that judges shall be eligible for membership.

1983 Grammatical changes made to the section and paragraph (5) amended to refer to those accruing creditable service under another retirement system.

1985 Subsection (5): added "except the military".

1986 Subsection (5): added provision excepting former government employees with ten-year vested



interest from provisions of section.

1987 Subsection (7): added "district, county and village officials and employees, and noncareer service employees of the Legislature, other than contract employees".

#### **7.1430 Credit.**

(a) Credit for service prior to the operative date of the Fund is granted as follows:

(1) Every employee who becomes a member of the fund on its operative date shall be entitled to prior service credit, without cost to himself, for periods of prior employment during which he has rendered service to the government.

(2) An employee who becomes a member and whose work schedule prior to the operative date of the fund required employment for less than 12 but more than 2 months in a calendar year, may be granted prior service credit for the months of inactivity by payment to the Fund before 1 January 1983 of the contributions which the employee would have paid had the employee been continuously employed and had the Fund been operative at that time.

(3) Persons who become members and who have held elective offices in the government before the operative date of the Fund shall be granted prior service credit for the length of the actual terms of office: provided, however, that any person applying for prior service credit under this subsection shall not receive prior service credit if he is entitled to creditable service for the same period under any other provision of this section.

(4) Any employee who becomes a member of the Fund and who was a member of the Civil Service Retirement Fund of the United States Government at the operative date, whether in an active or inactive status, may be granted prior service credit only if he definitely terminates his membership in such fund, receives a refund of his accumulated contributions therefrom, and pays such amount in full, including regular interest from the date of such termination, if subsequent to the operative date, to the date of payment, to the Government Retirement Fund.

(5) Any employee not in service on the operative date, or on an approved leave of absence on such date, for disability, military leave or other cause, shall be entitled to receive credit for prior service only when such employee has completed at least 5 years of contributing membership service subsequent to the operative date.

(b) A member who was ineligible for membership in the Fund during any employment by the government prior to attaining membership but subsequent to the operative date may receive credit for that period of ineligible service if he deposits in the Fund the contributions he would have made if he had been a member of the Fund during that period together with regular interest thereon. No credit will be allowed until the deposit is made.

(c) Credit shall be granted to any employee for active service in the Armed Forces of the United States, occurring before or subsequent to the operative date, on a year for year basis up to a maximum of 5 years credit, provided the discharge from the service is under conditions other than dishonorable.

(d) In addition to the credit authorized in the immediately preceding subsection, credit shall be granted for active service performed during a national emergency proclaimed by the President of the United States or during a national emergency or state of war declared by the Congress of the United States, occurring before or subsequent to the operative date of this title, provided the employee entered such active service while employed by the government and reenters its service within a period of 90 days following his discharge from the Armed Forces of the United States, under conditions other than dishonorable.

(e) Any person employed by the government for 10 years or more, who is a member

of the fund, and who is appointed for a position within the United States Government which requires his continued residence within American Samoa and has not terminated his membership in the fund, may be allowed credit for such federal service; provided, he does not become a member of the Civil Service Retirement System; and provided further, that he pays to the fund during the years for which he claims credit as a federal employee the contributions which he would have paid had his employment been with the government, together with regular interest thereon, from the date on which such contributions would have been made had such service not been with the federal government, to the date of actual payment.

(f) Any person employed by the government who takes leave of absence without pay or terminates from such employment in order to further his education may, upon returning to employment with the government, claim retirement credit for such time spent in furthering his education, by paying to the retirement fund contributions which he would have paid had such time spent on education not been excluded by virtue of his leave of absence without pay or termination, together with regular interest thereon, from the date on which such contributions would have been made, had such time so spent not been excluded, to the date of actual payment; provided, however, that this section shall apply only to those persons who resume employment in the government within 2 years after completing their studies.

**History:** 1971, PL 12-29 § 8; 1972 PL 12-48 § 1; amd 1973, PL 13-41; 1981, PL, 17-28 § 3 amd 1985, PL 19-22 § 2; amd 1986, 19-37 § 10.

**Amendments:** 1973 Subsection (c): increased period of service in armed forces.  
1985 Subsection (C): deleted “in addition to any” and replaced it with “or”; added “before or”: deleted final sentence concerning granting of prior service credit to employees receiving a pension or annuity from the United States government.  
1986 Subsection (c): amended generally.  
Subsection (d): added.  
Subsection (C): relettered from former subsection (d).  
Subsection if): relettered from former subsection (e).

#### **7.1431 Computation of credit.**

(a) The contributions required pursuant to 7.1430 for the purchase of creditable service, with the exception of subsection (b) thereof, shall be computed by multiplying the member’s normal monthly contributions at the time the request for credit is initiated by the number of months of prior service being acquired.

(b) In the case of a member purchasing creditable service pursuant to subsection (b) of 7.1430, the number of months of prior service being acquired shall be multiplied by the monthly contributions he would have made if he had been a member of the fund during the period of prior service being acquired.

(c) In the computation of credit for service for purpose of the Fund 15 days or more of service during any month shall constitute a month of service. Service of less than 15 days during any month shall be disregarded. A year shall mean any period of 12 consecutive months and shall not be confined to a calendar year.

(d) Members failing to qualify for the 30 years maximum retirement benefits may apply unused accrued sick leave on an hour for hour basis for service credits.

**History:** 1971, PL. 12-29 §§ 8, 9; 1972, PL 12-48 § 2; amd 1984, PL 18-32 § 2.

**Amendments:** 1984 Subsection (d) added.

## **7.1432 Certificate of prior service.**

**History:** 1971, PL 12-29 § 8.

**Reviser's Comments:** Repealed by PL 17-28 § 13.

## **7.1433 Government contributions to Fund.**

(a) The government shall make contributions to the Fund each year on an actuarially funded basis as determined by the Board. Based on actuarial assumptions adopted by the Board, the actuary, with approval of the Board, will determine the normal cost contribution percentage payable and accrued benefit cost contribution percentage payable by the government during each Fund-year as follows:

(1) The normal cost contribution percentage for each Fund-year after 30 September 1981, is the percentage of aggregate compensation of all current members which, if contributed over each member's prospective period of service and added to aggregate member contributions, will be sufficient, with addition of the accrued benefit cost, to provide for payment of all future benefits from the Fund.

(2) The accrued benefit cost contribution percentage for each Fund-year after 30 September 1981, is the percentage of expected aggregate compensation of members for that Fund-year which, if contributed during that fund-year, will be equivalent, as determined by the actuary with approval of the Board, to the accrued benefit cost contribution for that Fund-year. The accrued benefit cost contribution for each fund-year after 30 September 1981, is the level annual payment required to liquidate the unfunded accrued benefit cost at the beginning of that fund-year over the remainder of the period of 30 years beginning 1 October 1981; the accrued benefit cost contribution may not, however, be less than interest for one year on the unfunded accrued benefit cost at the beginning of such Fund-year.

(3) The unfunded accrued benefit cost at 1 October 1981, shall be \$10,982,083.00.

(4) The unfunded accrued benefit cost at the beginning of a Fund-year may, at the discretion of the Board, be adjusted to take account of changes in actuarial assumptions or of changes in cost attributed to service rendered prior to that Fund-year. The adjustment resulting from changed actuarial assumptions is liquidated over a period not to exceed 15 years from the date of the adjustment. The adjustment resulting from changes in cost attributed to service rendered prior to the date of such adjustment is liquidated over a period not to exceed 30 years from the date of the adjustment. Liquidation of any adjustment is by level contributions made each Fund-year by the government, however, no contribution may be less than interest for one year on the unfunded portion at the beginning of that Fund-year.

(b) The amount of contribution for each Fund-year by the government is determined by applying the sum of the normal cost contribution percentage and the accrued benefit cost contribution percentage for that Fund year prescribed by this section to the total salaries paid to members during each payroll period that Fund-year, and all these amounts are paid into the Fund following the close of such payroll period concurrently with the member contributions to the Fund for that payroll period.

(c) All contributions to the Fund, income from investments of the Fund, and any other income accruing to the Fund is held in the Fund and used solely to provide benefits to members of the Fund and to pay administrative expenses of the Fund.

**History:** 1971, PL 12-29 § 14; 1972, PL 12-48 § 5; 1981, PL 17-28 § 4; and 1986, PL 19-37 § 11.

**Amendments:** 1986 Subsection (c): added “and to pay administrative expenses of the fund” at end of subsection.

#### **7.1434 Members’ contributions to the Fund.**

(a) Each member of the Fund shall contribute 2.85 percent of the salary earned and accruing to such member subsequent to the operative date. Beginning 1 October 1981, each member of the Fund shall contribute to the Fund each fund-year 3 percent of compensation earned and accruing to each member during that year. This contribution shall be made as a deduction from salary, and applies only to income earned during regular working hours. Income earned on overtime is not subject to this contribution.

(b) Every employee who is a member of the Fund shall be deemed to consent and agree to the deduction from salary, and payment to such employee of salary less such deduction shall constitute a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by such employee during the period covered by such payments, except as to the benefits herein provided.

**History:** 1971, PL 12-29 § 13; 1972, PL 12-48 § 4; 1981, PL 17-28 § 5; and 1987, PL 20-17§ 1.

**Amendments:** 1987 Subsection (a): added “, and applies only to income earned during regular working hours. Income earned on overtime is not subject to this contribution”.

#### **7.1435 Prohibition of deductions from ineligible employees’ salaries.**

An employee who is ineligible for membership in the Fund shall not have any deduction made from his salary for a contribution to the Fund.

**History:** 1971, PL 12-29 § 13; 1972, PL 12-48 § 4.

#### **7.1436 Individual accounts for each member.**

(a) An individual account shall be maintained for each member, to which shall be credited the amounts of his contributions and regular interest thereon.

(b) Regular interest on such contributions shall be credited annually, at the close of each year, and shall be allowed only on the amount of the accumulated contributions standing to the credit of each member at the beginning of each year.

**History:** 1971, PL 12-29 § 22; and 1986, PL 19-37 § 12.

**Amendments:** 1986 Subsection (a): added “regular” before interest

**Research Guide:** For provisions on regular interest, see subsection (j) of 7.1403.

#### **7.1437 Interest of members in Fund.**

Each member shall, by virtue of the payment of contributions to the Fund, receive a vested interest in such contributions, and, in consideration of such vested interest, shall be conclusively deemed to undertake and agree to pay the same and to have the amounts deducted from his compensation as provided in 7.1434.

**History:** 1971, PL 12-29 § 23.

#### **7.1438 Transfer and attachment of interest prohibited.**

The right to a retirement annuity, or refund, is personal to the recipient, and the assignment or transfer of such benefit or any part thereof shall be void, except as otherwise provided in this chapter. No annuity or refund shall answer for debts contracted

by the person receiving the same, and it is the intention of this chapter that they shall not be attached or affected by any judicial proceeding.

**History:** 1971, PL 12-29 § 24.

**7.1439 Refund of contributions of separated employees—Return to employment.**

(a) Any member whose employment is terminated for any reason other than retirement is entitled to the return of all contributions he has made plus regular interest. Refund is made upon application by the member on a form provided by the board.

(b) Acceptance of this refund terminates membership in the fund and causes forfeiture of any further benefits.

(c) A member whose employment is terminated for any reason before he is eligible for vested retirement may leave his accumulated contributions in the fund, and they shall continue to earn regular interest. After 5 years the board may cause a member's accumulated contributions to be forfeited if they total less than \$25.00.

(d) A member whose employment is terminated for any reason after he is eligible for vested retirement may leave his accumulated contributions in the fund in order to be eligible for vested retirement benefits.

(e) Should a member in an inactive status return to government employment, he shall resume active fund membership with full credit for service previously rendered.

(f) A former member reentering government employment after having withdrawn his accumulated contributions (thereby terminating membership in the fund) must redeposit the amount of his previous refund with interest from the date of payment in order to obtain credit for such service.

(g) The withdrawal privilege granted by this section applies only to members whose employment has been terminated.

**History:** 1971, PL 12-29 § 11; 1981, PL 17-28 § 6; amd 1985, PL 19-15 § 1; amd 1986, PL 19-37 § 13; amd 1987, PL 20-13 § 2.

**Amendment** 1985 Subsection (c): deleted "is not required to withdraw his accumulated contributions immediately upon termination of employment. He" and added "whose employment is terminated for any reason before he is eligible for vested retirement"; replaced the numeral "4" with the word "four".

Subsection (d): added.

Subsection (e): relettered from former subsection (d). Subsection (f): relettered from former subsection (e).

Subsection (g): relettered from former subsection (f).

1986 Subsection (c): added "regular" before "interest".

1987 Subsection (c): deleted "for 4 calendar years following his termination of employment", and "At the end of this period he must accept the refund": added "After 5 years the board may cause a member's accumulated contributions to be forfeited if they total less than \$25.00".

**7.1440 Withdrawals by employees prohibited.**

An active member may not withdraw any of his accumulated contributions during his employment.

**History:** 1971, P 12-29 § 11.

**7.1441 Retirement—Voluntary and mandatory—Elected officials may finish term.**

(a) Notice. All employees must be advised of their eligibility for normal or early retirement upon attaining the necessary age and creditable service. However, failure to receive the notice shall not prevent the retirement or postpone the retirement date.

(b) Voluntary Retirement. Any member of the fund may voluntarily retire if he is at least 55 years of age and has completed 30 years of creditable service or has reached 65 years of age with 5 years of creditable service. Any member qualified for retirement under this subsection may apply for retirement on forms provided by the board. His retirement shall be executed on the day he specifies; provided, however, the retirement may not be less than 30 days nor more than 90 days after the date the application is filed.

(c) Medical Separation. (1) A member who has attained his normal retirement date or early retirement date may be involuntarily separated and entitled to an immediate unreduced retirement annuity if it is determined by the Board after certification of the Director of Health, that the member's health is not likely to improve; provided, the member is not eligible for workmen's compensation for the condition causing the involuntary separation.

(2) A member who has not attained his early retirement date and who has contributed to the fund for at least 5 years may be separated and entitled to an immediate unreduced retirement annuity if it is determined by the Board, after certification of the Director of Health, that the member's health prohibits him from satisfactorily performing the duties of any assigned position in the service of the government; provided, the member is not eligible for workmen's compensation for the condition causing the separation.

(3) At least once each year during the first 5 years following the approval of a medical retirement annuity to a member under subsection (2) and at least once in every 3-year period thereafter, the board requires the disabled annuitant to undergo a medical examination at the place of residence of the annuitant or at any other place mutually agreed upon, by a physician or physicians engaged by the Board of Trustees. If the examination indicates that the annuitant is no longer physically or mentally incapacitated for service, or that he is able to engage in a gainful occupation, payments of disability retirement annuity from the Fund shall be discontinued, and the annuitant shall be reinstated in governmental service in a position for which he is found qualified and capable of performing. However, in no case shall the payments be discontinued if the member has attained age 65.

Should the disabled annuitant become gainfully employed in any capacity and his earnings are less than his salary on his medical retirement date or the salary currently paid for a similar position, whichever is lower, the Board shall continue a medical retirement annuity in an amount which is equal to the difference, but not to exceed the amount of the medical retirement annuity.

Should any member receiving a medical retirement annuity refuse to submit to the medical examination, payments by the fund shall be discontinued by the Board until the withdrawal of his refusal and, should his refusal continue for one year all rights of the member to any medical retirement annuity are revoked by the Board. After a medical retiree reaches the age of 65, no further annual or 3-year medical examinations may be required.

(4) A member who has recovered from medical retirement and who is restored to active service immediately becomes an active member of the Fund and has member contributions deducted from his pay and upon subsequent retirement has his service retirement allowance based upon all creditable service including both that service upon which his medical retirement annuity was based and his creditable service after his recovery.

(d) Early Retirement. A member of the fund may voluntarily retire with a reduced pension if he is at least 55 years of age and has completed 10 years of creditable service.

(e) Vested Retirement. A member of the fund who separates from service on or after 1 October, 1984 and who has completed 10 years of creditable service but is not eligible for early retirement may voluntarily retire with a reduced pension as of the first day of any month after attaining age 55 provided the member does not withdraw his member contributions.

(f) A retired member receiving an annuity who is reemployed by the government in any capacity in which he again becomes a member of the fund, or who is remunerated by the government for personal services in a status other than as an employee or official for a period in excess of six months, including renewals, has his right to receive payment of his annuity suspended for the duration of his employment or contract, but all other rights pertaining to his annuity are retained by him.

**History:** 1971, PL 12-29 § 10; 1972, PL 12-58 § 3; 1975, PL 14-3 § 1;amd 1977, PL 15-46;amd 1979, PL 16-10 § 1; PL 16-20 § 1; 1981, PL 17-28 § 7;amd 1985, PL 19-15 § 2;amd 1986, PL 19-37 § 14;amd 1987, PL 20-13 § 3; amd 1989, PL 21-22.

**Amendments:** 1973 Subsection (e): added.

1977 Subdivisions (e)(1) to (e)(4) redesignated as (e)(2) to (e)(5), and a new (e)(i) added.

1979 Subsection (b): lowered voluntary retirement age from 60 to 55 years.

Subsection to): deleted from proviso at end of subsection provisions that employee be certain age, ranging from 50 to 62, and have certain period, from 15 to 30 years, of service.

1985 Subsection (g): added.

Subsection (h): relettered from former subsection (g).

1986 Subsection (c). paragraph (3): replaced "are discontinued until" with "shall be discontinued by the board until": added provision excepting from medical examinations medical retirees reaching age 65.

Subsection (h): added "in any capacity," after "government".

1987 Subsection (b): added "or has reached 65 years of age with 5 years of creditable service".

Subsection (e)(3): in the first paragraph, deleted "engaged in or is"; added "and the annuitment shall be reinstated in governmental service in a position for which he is found qualified and capable of performing"; in second paragraph, deleted "able to resume a gainful occupation": added "gainfully employed in any capacity" and "but not to exceed the amount of the medical retirement annuity".

Subsection (h): replaced "a service retirement" with "an" before "annuity"; added "in any capacity us which he again becomes a member of the fund, or who is remunerated by use government for personal services in a status other than as an employee or official for a period in excess of six months, including renewals" and "or contract" after "his employment".

## **7.1442 Retirement payments.**

(a) Each member shall receive an annual service retirement annuity on retirement equal to 2 percent of the average annual salary of the member multiplied by his total years of service up to a maximum of 30 years. Effective immediately and payable from October 1, 2012, as applicable, the annual service retirement annuity is increased to allow for a one half of one(0.5) percent increase for all retirees who have retired on, or prior to September 30, 2012. This increase shall not apply to retirees who have retired on, or after October 1, 2012.

(b) Service retirement annuities shall be payable in equal monthly installments, rounded to the nearest dollar, as life annuities, and shall not be increased, decreased, revoked, or repealed except for error, or except where specifically otherwise provided.

(c) The first payment of a life annuity shall be made pro rata for the fraction of a month elapsing between the date of retirement and the end of that month. The last payment shall be made as of the date of death.

(d) Instead of an annuity payable for the life of a retired member, the member may elect to receive a lesser retirement annuity during his lifetime but with all or a portion of that annuity continued to a contingent annuitant designated by the member at the time of retirement. The amount of the lesser annuity elected is determined by the Board so that the value of that annuity at the time of retirement will be the same as the value of the life

annuity otherwise payable without an election. The election may not be permitted by the Board unless the value at retirement of expected monthly annuity payments during the life of the retired member is no less than one-half the value of the life annuity otherwise payable without such an election.

(e) Should a member who is eligible for early retirement as provided by 7.1441 retire, the amount of his retirement annuity is determined in the same manner as described, but then reduced by one-fourth of one percent multiplied by the number of completed months in the period which begins at the date of early retirement and ends at the date when the member first would be eligible to retire with an unreduced retirement annuity.

(f) Should a member who is eligible for vested retirement as provided by section 7.1441 retire, the amount of his retirement annuity is determined in the same manner as described for early retirement in 7.1442(e), but then reduced in addition by one-fourth of one percent multiplied by the number of completed months in the period which begins at the date of termination and ends at the date of the member's fifty-fifth birthday, subject to maximum additional deduction of 15 percent. The annuity so determined, that is normal retirement annuity less deduction for early retirement and additional deduction as calculated above, will be paid to retiree or beneficiary.

(g) Should a member retire after attaining age 65, the amount of his retirement annuity is determined as described, but is additionally increased by one-fourth of one percent multiplied by the number of completed months in the period which begins on the date of the member's sixty-fifth birthday and ends on the member's retirement date.

(h) Not less often than once every 2 years the board recommends to the Governor, for proposal to the Legislature, that service and medical retirement annuities currently payable to retired members and other annuitants be increased or not. These recommendations by the Board are made after due consideration by the Board of current conditions, and are accompanied by a statement of the cost of any proposed increase as certified by the actuary.

(i) In addition to service retirement annuities paid under terms of subsections (a), (e) and (g) above, an additional retirement incentive benefit will be paid in accordance with the following terms and conditions:

(1) Eligibility is limited to those active members age 55 or over with ten or more years of service who are currently eligible for retirement or early retirement, and who complete application for retirement within ninety (90) days of the effective date of this act.

(2) An annual incentive benefit equal to \$100.00 per year of service, up to a maximum of 30 years, will be paid on a prorated monthly basis as a supplement to the service retirement annuity until the retiree reaches the age of 62, or for a minimum period of five years.

(3) Reemployment by the government, in any capacity, will result in termination of the retirement incentive supplement and loss of eligibility for such benefits.

(4) Supplemental incentive benefits will not be considered in determining the amount of contingent annuities or for future increases authorized under subsections (a), (d) and (h) above.

**History:** 1971, PL 12-29 §§ 12, 25; amd 1979, PL 16-24 § 1; 1981, PL 17-28 § 8; amd 1983, PL 18-12 § 1; amd 1985, PL 19-15 § 3; amd 1987, PL 20-10 § 1; 1989, PL 21-22; 1991 PL 22-13 § 1; 1991, PL 22-4 § 1; 1993 PL 23-1 § 1, 23-6 § 1; 1995 PL 24-7 § 1; 1998 PL 25-21 § 1; 2000, PL 26-18; amd 2002, PL 27-26, amd 2004, PL 28-23; 2006, PL 29-27; 2008, PL 30-28; 2011, PL 32-1; amd 2013, PL 33-2; amd 2014, PL 33-17 § 1.

**Amendments:** 1979 Subsection (d): added.

1983 Subsection (a) amended to increase retirement annuities.

1985 Subsection (C): deleted "retire early" and added "who is eligible for early retirement" and "retire".



Subsection (f): added.

Subsection (g): relettered from former subsection (f).

Subsection (h): relettered from former subsection (g).

1987 Subsection (a): added annual service retirement annuity increases beginning October 1, 1986.

**Reviser's Comment:** Section 1 of PL 16-32 provided: "Notwithstanding 7.1442, a person who is now qualified or after the effective day of this act, qualifies for a service retirement annuity under 7.1401 et seq. shall receive no less than \$50 a month."

Section 2 of PL 29-27 provided: "Because of the urgent financial needs of our retired employees, it is deemed appropriate for this act to become effective immediately upon passage by the Legislature and approval by the Governor."

**Research Guide:** For a definition of average annual salary. see 7.1403 of this title.

### **7.1442.1 Retirement benefits to otherwise ineligible persons.**

**History:** 1971, PL 12-29 § 12, 25; 1979, PL 16-24 § 1; 1981, PL 17-28 § 8; 1983, PL 18-12 § 1; 1985, PL 19-15 § 3.

**Reviser's Comment:** Repealed by PL 19-37 § 19.

### **7.1443 Death benefits.**

(a) Should a member in either an active or inactive status die prior to actual retirement, his accumulated contributions plus interest to the date of death shall be paid to his survivors as provided in this section. Should a retired member die before the annuity paid equals the amount of his retirement contributions plus interest accumulated to his retirement date, the difference shall be paid.

(b) Under regulations prescribed by the Board, a member may designate a beneficiary or beneficiaries for the purpose of this section.

(c) Benefits authorized under subsections (a), (b), (e) and (f) of this section shall be paid to the person or persons surviving the member in the following order of precedence:

(1) to the beneficiary or beneficiaries designated by the member in a signed and witnessed writing received by the board before his death;

(2) if not the above, to the widow, or widower, of the member;

(3) if neither of the above, to the child or children of the member and descendants of deceased children by representation;

(4) if none of the above, to the parents of the member or the survivor of them;

(5) if none of the above, to the next of kin as the board determines entitled;

(6) if none of the above, the duly appointed executor or administrator of the estate of the member.

(d) Should an active member die before retirement, but after attaining eligibility for retirement, but after attaining eligibility for retirement under 7.1441 leaving a surviving spouse, the surviving spouse, if eligible, may elect to receive either the death benefits provided under this section or a life annuity payable from the Fund in an amount equal to one-half the retirement annuity that otherwise would have been payable to the deceased member had he retired on the date of his death. Should the surviving spouse die before the total of annuity payments made equals the amount of the member's accumulated contributions and interest at his death, the difference is paid to the duly appointed executor or administrator of the estate of the spouse.

(e) In addition to benefits payable under subsections (a) or (d) above, a death benefit will be paid to the person or persons surviving a member who dies while on active status as follows in accordance with subsection (c) of this section:

(1) a benefit of \$2,500.00 upon the death of a member with less than five years of service;

(2) a benefit of \$5,000.00 upon the death of a member with at least of five years, but less than ten years of service;

(3) a benefit of \$10,000.00 upon the death of a member with ten or more years of service.

(f) Upon the death of a retired member, a benefit of \$1,500.00 shall be paid to the survivors of the retired member in accordance with subsection (c) of this section. This benefit is in addition to other benefits provided for in this chapter. Payment of benefits bars recovery by any other person.

(g) Death benefits shall not be paid for deaths by suicide, nor may they be paid to a potential beneficiary of a member who has been charged with and is subsequently convicted of the homicide of that member. Payment of benefits bars recovery by any other person.

**History:** 1971, PL 12-29 § 25;amd 1981, PL 17-28 § 9; 1992, PL 22-25 § 1; 1996, PL 24-12; amd 1999, PL 26-10.

#### **7.1444 Investment of reserves exceeding current requirements.**

(a) The reserves of the Fund in excess of requirements for current operations shall be invested and reinvested by or under authority of the Board of Trustees. At its discretion, the Board may designate one or more of its members to supervise this function; in either case, references to the Board in this section are considered to refer to the individual or committee exercising the function.

(b) The Board of Trustees has full power and authority to direct the investment and reinvestment of the fund without distinction between principal and income, in property (defined in (c) below) it considers advisable. The Board may invest and reinvest the fund in property in which a prudent man familiar with those matters and using care, skill, prudence, and diligence enterprise would invest in the conduct of like character and with like aims, insuring that the investments of the fund are diversified so as to minimize the risk of large losses unless to do so would clearly not be prudent. The power to manage investments includes, but is not limited to, the power to hold, purchase, sell, convey, assign, transfer, dispose of, lease, subdivide, or partition any assets held or proceeds thereof, to execute or cause to be executed relevant documents; to enter into protective agreements, execute proxies, grant consent; and to do all other things necessary or appropriate to its position as an owner or creditor.

(c) The word “property” means and includes real, personal, and mixed property of any and every kind and nature, including but not limited to, bonds, preferred or common stocks, mortgages, interests in any kind of investment trust or common trust fund, notes, leases, oil or gas royalties, or other evidences of rights, interests or obligations, secured or unsecured, and whether or not they are of a wasting asset nature.

(d) All proceeds and income from investments, of whatever nature, must be credited to the account of the Fund. Transactions in marketable securities are carried out at prevailing market prices.

(e) Investments may be held in bearer form, or may be registered either in the name of the fund or the nominee of the custodian.

(f) Due bills may be accepted from brokers against payment for securities purchased, pending delivery within a reasonable period of time of certificates representing the investments.

(g) Investments may not be made if, after the investment, the fund would own:

(1) any combination of obligations of any one political subdivision, corporation or other single issuing entity in excess of 5 percent of Fund assets at cost. This paragraph does not apply to general obligations of the United States or the Dominion of Canada or of the government; or

(2) obligations of the Dominion of Canada, together with its political subdivisions and corporations organized under its law or the law of its provinces in excess of 10 percent of fund assets at cost; or

(3) obligations or other investments issued or guaranteed by the government in excess of 17.5 percent of Fund assets at cost; provided, however, that this limitation does not apply to the obligations or other investments that are unconditionally guaranteed as to principal and interest by, or supported by lease assignment from, another entity whose principal business is outside of American Samoa.

(h) The Board may engage one or more financial institutions as custodians to assume responsibility for the physical possession of Fund assets or evidences of assets. The custodian submits reports, accountings, and other information in a form and at such times as requested by the Board. All costs incurred for custodial services are paid by the Fund. The custodian holds all assets for the account of the Fund and acts only upon instructions of the board. Custodians may not be engaged unless they:

(1) have been continuously engaged in rendering pension trust investment services for a period of 10 or more years; and

(2) are organized under the laws of the United States, a state, or a Territory; and

(3) are custodians for not less than 20 corporate, municipal or governmental retirement funds with total assets of not less than \$30,000,000.

(i) In order to secure expert advice and counsel, the Board may engage an investment agent who is an investment counselor as qualified by this subsection. The custodian may be engaged as the investment agent. All costs incurred in this connection are paid by the fund. Persons, firms, or corporations may not be eligible for employment as investment agent which acts as principal for its own account or as broker for a client other than the fund in connection with the sale of any security to or the purchase of any security from the Fund. Investment agents may not be engaged unless:

(1) the principal business of the person, firm, or corporation selected by the Board consists of rendering investment supervisory services; i.e., the giving of continuing advice concerning investment of funds on the basis of the individual needs of each client;

(2) the principal control of the person, firm, or corporation rests with individuals who are actively engaged in the business;

(3) the person, firm, or corporation and its predecessors have been continuously engaged in the business for a period of 10 or more years;

(4) the person, firm, or corporation is registered as an investment advisor under United States law;

(5) the contract between the Board and the investment agent is of no specific duration and is voidable at any time by either party; and

(6) the person, firm, or corporation certifies, in writing, to the Board, that the assets under its direct investment supervision are in excess of \$30,000,000. The Board establishes and may from time to time change operating arrangements with the investment agent in order to facilitate efficient management and timely investment action. Investment may not be made unless in the opinion of the investment agent it is an appropriate investment for the Fund and is an authorized investment, or in the absence of

that opinion, unless preceded by a resolution of the Board directing the investment.

**History:** 1971, PL 12-29 § 20; 1971, PL 17-28 § 10; amd, 1985, PL 19-35 § 1; amd 1986, PL 19-37 § 15; amd 2007, PL 30-5.

**Amendments:** 1985 Subsection (g)(2): replaced the numeral “10” with the word “ten”.

Subsection (h): deleted “government” and added, “fund”.

Subsection (i): deleted “government” and added, “fund”.

1986 Subsection (c): deleted “commodities”.

Subsection (g)(2): substituted word “ten” with numeral “10”.

Subsection (h): deleted ‘its ex officio director, or a member, committee or agent so authorized by the board.’.

Subsection (h)(2): deleted ‘ownership and’.

#### **7.1444.1 Loans to development bank.**

**History:** 1982, PL

**Reviser’s Comments:** Repealed by PL 24-12 § 8.

#### **7.1444.2**

**Reviser’s Comment:** Repealed by PL 29-21 and PL 29-14.

#### **7.1444.3 Loans to the American Samoa Government.**

**History:** 1998, PL 25-30 § 1.

**Reviser’s Comment:** Repealed in 2007 by PL 30-5 § 8.

#### **7.1444.4 Credit facility authorization—Assistance—American Samoa Medical Center Authority.**

(a) In accordance with the provisions of section 7.1444(g)(3), which limits any investment in obligations or other instruments issued or guaranteed by the government to no more than ten percent of Fund assets at cost, the Governor, on behalf of the American Samoa Government (ASG), and the Board of Directors of the American Samoa Government Employees Retirement Fund (ASGERF) are authorized to enter into a credit facility whereby, the ASGERF will lend and ASG will borrow an amount of \$10,000,000.

(b) The Governor, the Treasurer and the Chief Financial Officer for the American Samoa Medical Center are authorized to negotiate the terms of the credit, including an interest rate, repayment terms and such other terms and conditions as may be required to obtain the credit facility, except that the interest rate must be tied to the current actuarial rate of return and the interest rate shall not be less than 8% per annum. The Governor, the Treasurer and the Chief Financial Officer for the American Samoa Medical Center and the ASGERF Board are further authorized to execute all instruments and documents necessary to conclude the transaction, including promissory notes which evidence indebtedness of ASG. The Governor is authorized to pledge the full faith and credit of ASG as well as to provide collateral as required by the ASGERF Board to secure the loan.

(c) The loan proceeds shall be placed in an earmarked fund and used exclusively for the following purposes and in the following priority:

(1) debts, obligations and payables accumulated and owing to appropriate American Samoa Medical Center Authority (ASMCA) vendors, amounts not to exceed:

(A) Contingent—Liabilities

(B) Contingent—Liabilities Penalty & Interest

Total \$1,800,000

(C) Vendor—Liabilities:

(i) SRW Industries

(ii) SPHI (Pharmacy consultant)

(iii) HPMR (Third party off-island Administrator)

(iv) KPMG, LLP 2003-2005 Audit fees

(v) ASPA

Total Liabilities \$5,000,000

Total expenditures \$6,800,000

(2) Continuing Operation of ASMCA \$1,700,000

(3) Matching funds \$1,500,000

**Total \$10,000,000**

(d) \$1,700,000 shall be used by ASMCA for the following specific purposes:

(1) Medicaid/SCHIP Local Match and Medical and Diagnostic Equipment:

(A) Beds; Ultrasound (Cardiology); Incubator; Pulse Oximeters; Gurneys; Patient Monitors; Examination Table; Operating Microscope; Tracoustics exam room; Electric exam table; Exam treatment chair; Floor unit; Zeiss Slit lamp; Visual field analyzer; Patient monitoring system; Chemistry analyzer; Birthing beds; Infant warmer system; Surgical Table; Infusion pumps; Autopsy table & sink (& installation); Blood pumps; Arterial Blood Gas machine; Neonatal monitors; C-arm extension; Double surgical tourniquet; Dual infusion pump; Cauterizing machine; Cysto table; Shea drill; Patient transport tables; Heater probe; Gastronommic scope; Steris system; Instrument washer; Portable cauterizing machine; Procedure table; Auditory exam table; Hand held dopplers; Baby cribs; Ultrasound simulation machine; Large whirlpool; Blood gas analyzers; Compact pasteurmatic machine; Electrocautery machine.

Total Expenditures \$1,200,000

(2) ASMCA Fiscal Year 2008 Budget \$ 500,000

Total \$1,700,000

(e) The Governor, the Treasurer and the Chief Financial Officer for the American Samoa Medical Center shall be authorized to expend proceeds of the loan to satisfy only the debts, obligations and payables accumulated and owing to ASMCA vendors as provided for in 7.1444.4(c)(1)(A)-(C) above and any surplus or remaining funds shall be utilized for the following specific purposes, in descending order of priority:

(1) purchasing diagnostic equipment;

(2) purchasing treatment equipment;

(3) paying for capital improvement projects, excluding housing projects; and equipment and continuing operation of ASMCA shall be provided directly to ASMCA and a full accounting of the said expenditures shall be made by ASMCA to Governor and the Legislature with full supporting documentation. The ASMCA

shall enter into a fiscal and operations reform plan with ASG, which shall be approved by the Governor, whereby ASMCA will implement procedures to increase its revenues, reduce its expenditures, achieve a balanced budget and improve the operations of ASMCA (“ASMCA Fiscal and Operations Reform Plan”). The Plan shall be submitted within six (6) months of the date of the loan.

**History:** 2005, PL 29-14; 2006, PL 29-21; 2008, PL 30-8.

**Amendments:**

7.1444.4 A.S.C.A. was inadvertently created twice by PL 29-14 and PL 29-21.

**Reviser’s Comments:**

Sec. 3 PL 29-21 creates Appropriation of revenue – Source of funding – Payments in lieu of taxes.

Sec. 4 PL 29-21 Lack of ASTCA revenues – Avoidance of default.

Sec. 5 PL 29-21 Sunset clause. ASTCA’s payment of \$1,100,000 as set forth in this Act shall cease upon the full payment of all principal and interest of the credit facility entered into between ASG and ASGERF in accordance with 7.1444.4(a) and (b) above.

Sec. 6 PL 29-21 repeals sections 7.1444.2, 15.0301 and 15.0302 A.S.C.A.

Sec. 7 PL 29-21 Effective date. Due to the urgent need to provide financial assistance to ASMCA, this act shall become effective upon passage by the Legislature and approval by the Governor.

**7.1444.5 Loan to American Samoa Government—Renovations of Capital Improvements and Projects.**

(a) In accordance with the provisions of section 7.1444(g)(3), which limits any investment in obligations or other instruments issued or guaranteed by the government to no more than seventeen and one-half percent of Fund assets at cost, the Governor, on behalf of the American Samoa Government (ASG), and the Board of Directors of the American Samoa Government Employees’ Retirement Fund (ASGERF) are authorized to enter into a loan agreement whereby the ASGERF will lend and ASG will borrow an amount not to exceed \$20,000,000.

(b) The Governor is authorized to utilize the \$20,000,000 loan amount in financing the costs of acquiring, improving, equipping or renovating all or a portion of the following capital projects: harbor dredging projects in Tutuila and Manu’a, port office/fire department buildings, port tug boat, KVZK antennae, customs bond warehouse, executive office building-annex (Territorial Energy Office, Election Office and the Office of Protection and Advocacy for the Disable), executive office building-tax office extension, executive office building-roof, territorial registrar’s office, library extension, immigration office building, procurement warehouse, airport hangar, Airport terminal and jet-way, seawalls, animal pound and veterinary clinic, Fono building, funding the Pacific Arts Festival, fiber optic cable, Lee Auditorium, stream realignment, bridge and soil stabilization/retaining wall, purchase of ten school buses, capital projects for the American Samoa Districts, and repairs to and refurbishment of the MV Sili. Unless a specific amount is appropriated for a particular project, improvement or acquisition, the Governor shall determine the application of available loan proceeds as between the various improvements set forth in this section (the “Improvements”) so as to accomplish, as nearly as may be, all of such Improvements. If an amount is specifically appropriated for an Improvement, said amount shall act as a ceiling for expenditures on that particular Improvement. If the Governor shall determine that it has become

impractical to accomplish any of such Improvements or portions thereof for any reason, including changed conditions, lack of funding or costs substantially in excess of those estimated, the Governor shall not be required to finance all of such Improvements. Any remaining proceeds of the loan amount may be used to finance additional capital projects as approved by the Legislature.

(c) Such loan shall be general obligation of American Samoa Government and the Governor is authorized to pledge the full faith and credit of American Samoa Government to the full and prompt payment of the principal of and interest on such loan. The Governor, and/or his designee(s), are authorized to negotiate the terms of the loan, including an interest rate, repayment terms and such other terms and conditions as may be required, except that the interest rate shall be fixed at seven and one-half percent (7.5%). The Governor and the ASGERF Board are further authorized to execute all instruments and documents necessary to conclude the transaction, including promissory notes which evidence the indebtedness of ASG. The Governor is authorized to pledge the Full Faith and Credit of ASG as well as to provide collateral as required by the ASGERF Board to secure the loan.

(d) Interest and principal payments on the loan authorized in this section shall be amortized over a ten-year term and payments made quarterly.

(e) There is appropriated such sums from the Government's general funds necessary for repayment of the loan authorized in this section, in order to finance the costs of acquiring, improving, equipping or renovating all or a portion of the following capital projects: harbor dredging projects in Tutuila and Manu'a, port office/fire department buildings, port tug boat, KVZK antennae, customs bond warehouse, executive office building-annex (Territorial Energy Office, Election Office and the Office of Protection and Advocacy for the Disabled), executive office building-tax office extension, executive office building-roof, territorial registrar's office, library extension, immigration office building, procurement warehouse, airport hangar, Airport terminal and jet-way, seawalls, animal pound and veterinary clinic, Fono building, for funding the Pacific Arts Festival, fiber optic cable, Lee Auditorium, stream realignment, bridge and soil stabilization/retaining wall, purchase of ten school buses, capital projects for the American Samoa Districts, and repairs to and refurbishment of the MV Sili.

(f) Funds shall be made available from the following sources as identified below, for repayment of the loan authorized in this section to finance the costs of acquiring, improving, equipping or renovating all or a portion of the following capital projects: harbor dredging projects in Tutuila and Manu'a, port office/fire department buildings, port tug boat, KVZK antennae, customs bond warehouse, executive office building-annex (Territorial Energy Office, Election Office and the Office of Protection and Advocacy for the Disabled), executive office building-tax office extension, executive office building-roof, territorial registrar's office, library extension, immigration office building, procurement warehouse, airport hangar, Airport terminal and jet-way, seawalls, animal pound and veterinary clinic, Fono building, for funding the Pacific Arts Festival, fiber optic cable, Lee Auditorium, stream realignment, bridge and soil stabilization/retaining wall, purchase of ten school buses, capital projects for the American Samoa Districts, and repairs to and refurbishment of the MV Sili:

(1) Forty percent (40%) of the excise taxes collected on beer and malt extracts as imposed pursuant to A.S.C.A., section 11.1002(a)(1)(A).

(2) Twelve and one-half percent (12.5%) of the excise taxes collected on alcoholic beverages as imposed pursuant to A.S.C.A., Section 11.1002(a)(1)(B).

(3) Twenty percent (20%) of the excise taxes collected on tobacco products as imposed pursuant to A.S.C.A., section 11.1002(a)(1)(C).

(4) All of the revenues collected from the Customs Entry Declaration Forms Processing Fee as imposed pursuant to A.S.C.A., section 27.1014(a)(5).

**History:** 2007, PL 30-5, 2008, PL 30-14, 2008, PL 30-29; 2008, PL 30-34.

#### **7.1445 Conflicts of interest—Prohibited acts.**

A member or an employee of the Board may not have any direct or indirect interest in the income, gains or profits on any investment made by the Board, or receive any pay or emolument for services in connection with any investment made by the Board. A member or an employee of the Board or an agent engaged by the Board may not become an endorser or surety or in any manner an obligor of investment made by the fund or for money loaned by or borrowed from the Fund, nor may the members, employees, or agents be held liable for actions taken in good faith and in performance of their duties. Participation as a member of the Fund is not construed to include interest, pay, or emolument within the meaning of this section.

**History:** 1971, PL 12-29 § 20; 1981, PL 17-28 § 11; amd 1986, PL 19-37 § 16.

**Amendments:** 1986 Replaced “his” with “their”.

#### **7.1446 Accounts and records.**

An adequate system of accounts and records shall be established and maintained for the Fund. It shall fully reflect the requirements of the provisions of this chapter, and shall be integrated, to the extent possible, with the accounts, records and procedures of the government, to the end that the same shall operate most effectively and at minimum expense, and that duplication of records and accounts may be avoided.

**History:** 1971, PL 12-29 § 21.

#### **7.1447 Costs and expenses.**

The costs and expenses of the administration of the Fund, including any custodial and audit fees incurred in connection with the financial operations of the Fund are paid by the Fund.

**History:** 1971, PL 12-29 § 18; 1972, PL 12-48 § 10; amd 1985,

**Amendments:** 1985 deleted “shall be paid from funds appropriated annually by the government for such expenditures” and added, “are paid by the fund”.

#### **7.1448 Actuarial surveys and valuations of the fund.**

Every 5 years an actuarial survey and investigation shall be made of the operating experience of the fund, including a study of the rates of mortality, disability, retirement and separations, and of other essential factors relating to the operations of the Fund. The survey also provides for a verification or redetermination of the rates of contribution by the government. At least once in each 5-year period between surveys, an actuarial valuation of the Fund is made showing the status of the fund and providing a verification or a redetermination of the rates of contribution by the government. At least once each year the Board shall obtain an actuarial opinion providing a verification or a redetermination of the rates of contribution by the government. The Board shall obtain



and provide to the Governor and the Legislature an actuarial opinion of the cost of any proposed amendments affecting the operation of the Fund. The costs of the surveys, valuations, and opinions are paid by the Fund.

**History:** 1971, PL 12-29 § 18; 1972, PL 12-48 § 10; 1981, PL 17-28 § 12; and 1985, PL 19-35 § 3.

**Amendments:** 1985 Deleted “from funds appropriated by the Legislature under 7.1447” and added “by the Fund”.

#### **7.1448.1 Administrative costs—Procedures for payment.**

All costs incurred to administer the Fund pursuant to title 7, chapter 14 will be approved by the Board, prior to payment and will be paid by the Fund.

**History:** 1985, PL 19-35 § 4; and 1986, PL 19-37 § 17.

**Amendments:** 1986 Deleted “, the Office of Budget, and the Office of the Treasurer”.

#### **7.1449 False representation—Penalty.**

(a) A person who knowingly makes any false statement, or falsifies, or permits to be falsified, any record or records of the Fund in any attempt to defraud the Fund, shall be sentenced as for a class D felony.

(b) In addition to the penalty in subsection (a), the government has a right to recover any payments made as the result of false representation.

**History:** 1971, PL 12-29 § 27; and 1980, PL 16-90 § 7.

**Amendments:** 1980 Amended to conform with penalties provided for in Title 46, Criminal Justice.

## **Chapter 15**

### **DEFERRED COMPENSATION PLAN**

#### **Sections:**

- 7.1501 Definitions.**
- 7.1502 Territorial Deferred Compensation Plan.**
- 7.1503 Board of Trustees.**
- 7.1504 Composition of the Board of Trustees.**
- 7.1505 Appointment and terms.**
- 7.1506 Compensation and expenses,**
- 7.1507 Legal advisor.**
- 7.1508 Assets of the plan.**
- 7.1509 Investments.**
- 7.1510 Custodian of the funds.**
- 7.1511 Limitation on liability.**
- 7.1512 Deferred amounts as compensation.**
- 7.1513 Costs of the plan.**

#### **7.1501 Definitions.**

As used in this chapter, unless the context clearly requires otherwise:

- (1) “Treasurer” means the Treasurer of American Samoa;
- (2) “Government” means the American Samoa Government;
- (3) “Employee” mean persons who are employed by the government in all occupational classifications;

(4) “Director” means the Director of Manpower Resources.

**History:** 1986, PL 19-55 § 1.

#### **7.1502 Territorial deferred compensation plan.**

The Government, through a Board of Trustees, may establish a compensation plan in accordance with section 457 of the United States Internal Revenue Code of 1954, as amended, for the benefit of employees to defer a portion of their compensation to a future period of time. Participation in the plan shall be totally voluntary and by written agreement between the employee and the government. An employee may authorize deductions to be made from the employee’s wages for the purpose of participation in the plan.

**History:** 1986, PL 19-55 § 1.

#### **7.1503 Board of Trustees.**

(a) The authority to establish the plan and make this chapter effective is vested in the Board of Trustees for the government deferred compensation plan. The Board shall be placed within the Office of Manpower Resources for administrative purposes.

(b) The Board shall adopt such rules as necessary to carry out the intent of this chapter. Such rules shall be published and made available to the public. The Board may engage services as necessary to establish, administer, or maintain the plan under its direction. An administrator may be engaged to administer the plan only after a solicitation of proposals from interested persons in accordance with specifications deemed appropriate by the Board.

**History:** 1986, PL 19-55 § 1.

#### **7.1504 Composition of the Board of Trustees.**

The Board of Trustees shall consist of 7 members as follows:

- (1) the Director, who shall serve as its chairperson, ex officio;
- (2) the Treasurer, ex officio;
- (3) five other persons, 3 of whom shall be government employees and who are participants of the plan, representing employees’ interests.

**History:** 1986, PL 19-55 § 1.

#### **7.1505 Appointment and terms.**

(a) Except for the Director and Treasurer, the members of the Board shall be appointed by the Governor and shall serve terms of 4 years each; provided, that of the trustees first appointed upon establishment of the Board, one shall be appointed for one year, one shall be appointed for 2 years, one shall be appointed for 3 years, and 2 shall be appointed for 4 years.

(b) A vacancy on the Board shall be filled by appointment of the Governor. The person appointed to fill a vacancy shall serve for the remainder of the unexpired term. If by the end of a term a trustee is not reappointed or a successor is not appointed, the trustee shall serve until his successor is appointed.

**History:** 1986, PL 19-55 § 1.

**7.1506 Compensation and expenses.**

Each trustee shall serve without compensation but shall be reimbursed from the Fund for any necessary expense incurred in the performance of duties.

**History:** 1986, PL 19-55 § 1.

**7.1507 Legal advisor.**

The Attorney General or his designee shall be the legal advisor of the Board.

**History:** 1986, PL 19-55 § 1.

**7.1508 Assest of the plan.**

Assets of the plan, including funds deferred, investments, property and rights purchased with such funds, and any interest or income attributable to such funds, are restricted assets of the government employees who are participants of the plan. Such assets may not be used for any purpose other than investment under the plan except as made available to participants in this plan or their beneficiaries.

**History:** 1986, PL 19-55 § 1.

**7.1509 Investments.**

The Board may create a trust or other special funds for the segregation of funds or assets resulting from compensation deferred and for the administration of the plan. Funds held by the Board pursuant to a plan established under this chapter shall be invested in investment products permitted under the plan; provided, that any investment contract entered into shall be made with companies authorized and licensed to do business in American Samoa. Investment products shall be limited to annuities, life insurance, savings accounts, mutual funds, or any combination thereof which shall have been reviewed and selected by the Board after a competitive bidding process based on the specifications and considerations deemed appropriate by the Board. Nothing in this chapter shall be construed to permit any type of in-vestment prohibited by law, but shall not be included in the computation of income taxes withheld on behalf of any participating employees.

**History:** 1986, PL 19-55 § 1.

**7.1510 Custodian of the funds.**

The Treasurer shall be the custodian of the Funds created under the plan. All payments from the Fund shall be made by the Treasurer only upon vouchers signed by the Chairperson of the Board and countersigned by other members of the Board designated by the Board.

**History:** 1986, PL 19-55 § 1.

**7.1511 Limitation on liability.**

The Government shall not be liable for the sums deferred or the results of any investment.

**History:** 1986, PL 19-55 § 1.

**7.1512            Deferred amounts as compensation.**

Compensation deferred pursuant to a plan established under this chapter shall be deemed regular compensation for the purpose of computing contributions to or benefits under existing retirement, pension, or social security systems applicable to participating employees, but shall not be included in the computation of income taxes withheld on behalf of any participating employees.

**History:** 1986, PL 19-55 § 1.

**7.1513            Costs of the plan.**

Costs for implementing and administering the plan shall be borne by the plan and its participants, except for incidental expenses such as the cost of payroll deductions, and the routine processing of forms which shall be borne by the American Samoa Government.

**History:** 1986, PL 19-55 § 1.